SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1224.

JOHN E. WHITE, AGENT, APPELLANT,

vs.

JOSEPH R. CROW, JOHN B. HENSLEE, ROBERT RAY, SHERIFF, &C., ROBERT RANKIN, L. C. WILSON, H. M. NOEL, J. C. LOKER, JAMES STREETER, AND O. H. SIMONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED DECEMBER 4, 1883.

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1 Pleas in the Circuit Court of the United States for the district of Colorado.

Be it remembered that heretofore and on, to wit, the 12th day of February, A. D. 1883, came C. Edgar Smith, esqr., an attorney of record in said court, and filed in said court a bill of complaint, wherein John E. White, agent, was complainant and Joseph R. Crow et al. were defendants. And the said bill of complaint is in words and figures as follows, to wit:

In the United States Circuit Court for the district of Colorado.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW, JOHN B. HENSLEE, GRIFFITH EVANS, and ROBERT RAY, sheriff. } In equity.

Bill of Complaint.

2 To the judges of the United States Circuit Court for the district of Colorado, in the —— circuit, sitting as a court of equity:

The bill of complaint of John E. White, agent, above named, respectfully showeth to this honorable court as follows:

That your orator is a resident and citizen of the city, county, and state of New York.

That the above-named defendant Joseph R. Crow is a resident and citizen of the county of Lake and state of Colorado.

That the defendant John B. Henslee is a resident and citizen of the same county and state.

That the defendant Griffith Evans is a resident and citizen of the county of Chaffee and state of Colorado.

That the defendant Robert Ray, sheriff, is a resident of the said county of Chaffee, and holds and exercises the office of sheriff of said county, and did so hold and exercise the duties and powers of said office during the time hereinafter mentioned in this bill of complaint.

3 And your orator respectfully shows that on or about the first day of December, 1882, he became a purchaser for a valuable consideration, at a public receiver's sale, duly and legally authorized by and under the authority of the Supreme Court held within and for the county and state of New York, of the franchise and property of the Brittenstene Silver Mining Company, a corporation organized and existing under the laws of the state of New York, and a citizen of said state, and holding, owning, and in possession of certain mining claims or lodes and certain personal property situated in Grizzly gulch, in Chalk creek mining district, county of Chaffee and state of Colorado.

And your orator further shows that at the time of said receiver's sale and your orator's purchase thereunder the property of the said

Brittenstene Silver Mining Company consisting of twelve or more mining claims or lodes located under the laws of the United States, a tunnel site located and laid out for the purpose of intersecting and developing said lodes, and that there were several houses or
4 dwellings, an engine house, engine, and boiler, air compressors, tools, and divers other articles of personal property attached to and on said property situated as aforesaid.

And your orator further shows that the property of the said the Brittenstene Silver Mining Company was at the time hereinafter mentioned, and is now, of great value and worth, as your orator is informed and believes, not less than the sum of fifty thousand dollars ($50,000).

And your orator further shows that at the times hereinafter mentioned that each and every one of said lodes of the aforementioned Brittenstene Silver Mining Company was a distinct and separate parcel or tract of property, with individual and distinct locations and boundaries separate from each other, and that each had a distinct and separate market value as much, and to the same extent, as though located and owned by distinct and separate individuals.

And your orator further shows that immediately subsequent to the aforementioned receiver's sale, and under the authority and order of the said Supreme Court for the county and state of New
5 York, your orator received from the said receiver a duly and properly executed deed of conveyance of all the property, rights, and appurtenances of the said company, which said deed is hereto appended as a part of this bill and marked "1;" and likewise, by order of the said Supreme Court, a deed of conveyance from the said the Brittenstene Silver Mining Company, which said deed is hereto appended as a part of this bill and marked "2."

And your orator further shows that theretofore and under the order of the said Supreme Court, the said the Brittenstone Silver Mining Company had executed and delivered to the said receiver a deed of conveyance to the said property, which deed, as well as the deeds from the said receiver and the said company to your orator, were duly filed for record in the county clerk's and recorder's office of the county of Chaffee, in which county the said property is situated.

And your orator further shows that immediately subsequent to the said receiver's sale your orator actively and diligently took steps to ascertain the condition of said property so purchased by him, and the number and amounts of the legal claims and liens on said
6 property for which said property was liable, and forwarded money sufficient to pay off and settle all claims and liens, with authority to do any and all things necessary in the premises to perfect the title acquired at said receiver's sale and the deeds given in pursuance thereof.

And, further complaining, your orator shows that at the time of his said purchase at the receiver's sale there were certain claims, liens, judgments and sales relating to the said property, more particularly mentioned and described as follows:

One certain judgment in the County Court of Chaffee county, state of Colorado, recovered on the 17th day of April, 1882, for the sum of nineteen hundred and eighty-three and eighty-one one-hundredths dollars, ($1,983.81,) on which judgment execution was issued, and on the 10th day of June, 1882, a sale was made by the above-named defendant, Robert Ray, sheriff, of all the property of the said the Brittenstene Silver Mining Company, situated as hereinbefore described, at which sale the above-named defendant, Griffith Evans, execution creditor, became the purchaser for the bid of one thousand dollars, ($1,000.)

7 That pursuant to said sale the said defendant, Robert Ray, sheriff, made and executed to the said defendant, Griffith Evans, a certificate of purchase, a copy of which certificate is hereto appended and marked "A," the same being made a part of this bill of complaint.

And your orator further shows that there was another certain judgment entered against the Brittenstene Silver Mining Company in the County Court of Lake county, state of Colorado, on or about the 13th day of January, 1882, for the sum of fifteen hundred and ninety-four and four one-hundredths dollars, ($1,594.04,) in favor of one Joseph R. Crow, the plaintiff therein.

That on the 17th day of June, 1882, under an execution issued out of the said County Court of Lake county, on the above-mentioned Crow judgment, the said defendant Robert Ray, sheriff, again sold all the property of the said the Brittenstene Silver Mining Company, situated as hereinbefore described, at which sale the defendant Joseph R. Crow became the purchaser for the bid of seventeen hundred and eighteen and twenty-seven one-hundredths dollars,

8 ($1,718.27,) and the defendant Robert Ray, sheriff, made and executed to the said Crow a certificate of purchase, which said certificate recited that said sale was made subject to an execution in favor of one George M. Robeson, a copy of which certificate is hereto appended and marked "B," the same being made a part of this bill of complaint.

And your orator further shows that on the 11th day of January, 1882, a writ of attachment issued out of the County Court of Lake county in favor of one George M. Robeson et al., and against the Brittenstene Silver Mining Company, and directed to the said Robert Ray, sheriff of said Chaffee county, by virtue of which the said Ray, as sheriff, on the 13th day of January, 1882, levied upon all the property of the Brittenstene Silver Mining Company hereinbefore described, and filed in the office of the county recorder of Chaffee county, on or about the 20th day of January, 1882, a certificate of said levy.

And that on or about the 6th day of February, 1882, a judgment was recorded against the Brittenstene Silver Mining Company in the County Court of Lake county, state of Colorado, in favor

9 of said George M. Robeson et al., in the action wherein the said attachment was made, for the sum of four hundred and one and forty one-hundredths dollars, ($401.40.)

And subsequently thereto, an execution issued on the foregoing judgment of said George M. Robison from the said Lake County Court, and the defendant Robert Ray, sheriff, on the 8th day of July, 1882, again sold all the property of the Brittenstene Silver Mining Company hereinbefore described, at which sale the said George M. Robison became the purchaser for the bid of four hundred and sixty-six and fifty-five one-hundredths dollars ($466.55), and received a certificate thereof from the defendant Robert Ray, sheriff, a copy of which is hereto appended, marked C, and made a part of this bill of complaint.

That subsequently thereto, as your orator is informed, viz., on or about the 12th day of July, the said defendant Robert Ray, sheriff, under a pretended execution on the aforementioned judgment, for nineteen hundred and eighty-three and eighty-three one-hun-
10 dredths dollars ($1,983.83), of said Griffith Evans, recovered on said 17th day of April, 1882, sold or pretended to sell certain personal property belonging to the Brittenstene Silver Mining Company, for the pretended bid of three hundred and eighty and thirty one-hundredths dollars ($380.30), to the said Griffith Evans, and pursuant thereto made and executed to said Griffith Evans, the pretended purchaser, a bill of sale of said personal property, a copy of which is hereto appended and marked "D," the same being made a part of this bill of complaint.

And your orator further shows that on or about the 19th day of August, 1882, the said Robert Ray, sheriff, again sold all the property of the Brittenstene Silver Mining Company hereinbefore described, under an execution issued out of the County Court of Chaffee county, on the judgment hereinbefore mentioned, for nineteen hundred and eighty-three & 83 one-hundredths dollars ($1,983.83), in favor of said Griffith Evans, at which sale the said Griffith Evans a second time was a bidder on a second sale under the same judgment, and the aforementioned property was again struck off
11 to him by said Robert Ray, sheriff, for the sum of one thousand and forty-nine and eighty-eight one-hundredths dollars ($1,049.88), and thereupon the said Robert Ray, sheriff, made and executed to said Griffith Evans another and a second certificate of purchase of the same property, a copy of which is hereto appended and marked "E," the same being made a part of this bill of complaint.

And your orator shows that there were certain other judgments against the Brittenstene Silver Mining Company, viz., one certain judgment in the County Court of Lake county, in favor of one Faulkenan for the sum of one hundred and twenty-eight and twenty-seven one-hundredths dollars ($128.27,) entered on or about the 26th day of June, 1882.

One certain judgment in the County Court of Chaffee county, in favor of one Edward R. Howe, for the sum of five hundred dollars ($500,) entered on or about the 4th day of September, 1882, but no sales were ever made under the foregoing.

12 And your orator shows that he has paid or caused to be paid all of the foregoing judgments and claims except as hereinafter appears, either to the said Robert Ray, sheriff, for the use of the party or parties entitled thereto, or into the court where said judgments were entered, as follows: That he did on the 9th day of December, 1882, pay to the said Robert Ray, sheriff, the sum of one thousand and fifty dollars ($1,050,) on the aforementioned sale of the 10th day of June, 1882, and did receive from the said sheriff a certificate of redemption, a copy of which is set forth and made a part of this bill of complaint, and marked "F."

That on the 9th day of January, 1883, your orator caused to be paid on the aforementioned Faulkenan judgment into the County Court of Lake county thes um of one hundred and thirty-eight and twenty-seven one-hundredths ($138.27) dollars, and has received from the clerk of said court a certificate of satisfaction of said judgment.

That on or about the day of January, 1882, your orator caused to be paid into the County Court of Chaffee county the sum
13 of five hundred and seventy-two and thirteen one-hundredths dollars ($572.13,) in settlement of the aforementioned judgments of Edward R. Howe, and has received from the clerk of said court a certificate of satisfaction thereof.

That on the 5th day of January, 1883, your orator caused to be paid to the sheriff of the said county of Chaffee the sum of four hundred and sixty-six dollars and fifty-five one-hundredths, ($466.55,) and received from the said sheriff a certificate of redemption from the aforementioned sale made to George M. Robison on the 8th day of July, 1882, a copy of which is hereto appended and marked G; but your orator further shows that all of the judgments, liens, and sales mentioned hereinbefore, and so far as your orator has knowledge all the liens or pretended liens existing against the said Brittenstene Silver Mining Company's property at the time of your orator's purchase, have been paid and satisfied as aforesaid, except the said judgment sale and certificate issued to said Crow on the 17th day of June, 1882, for his bid of seventeen hundred and eighty-three
14 and eighty-eight one-hundredths dollars, ($1,783.88,) and the alleged claim under the aforementioned bill of sale to the said Griffith Evans for three hundred and eighty and thirty one-hundredths dollars, ($380.30,) and the claim under the said sale of real property to the said Griffith Evans on the 19th day of August, 1882, for the sum of one thousand and forty-nine and eighty-eight one-hundredths dollars, ($1,049.88.)

And your orator further shows that on or about the 7th day of December, 1882, your orator employed one of the solicitors in this action, C. Edgar Smith, residing and practicing as an attorney in the city of Denver, and sent him to Leadville for the purpose of conferring with the said defendant Henslee in relation to the claims, liens, and judgments against the said the Brittenstene Silver Mining Company, for the reason that it was known to your orator that the

said Henslee had been the agent of the said the Brittenstene Silver Mining Company for the service of process in the state of Colorado under the statute so made and provided, and because of his said relation to said company your orator conceived that the said
15 Henslee would be in possession of all information concerning any and all proceedings affecting or relating to the property of said Brittenstene Silver Mining Company and the interests acquired by your orator by the purchase aforesaid, and because your orator knew of no other person in the state of Colorado who would in any probability be possessed of the said information.

That at that time the said Henslee informed the said Smith that he either owned or controlled all the judgments and claims against the said the Brittenstene Silver Mining Company, and affecting its property, and gave to the said Smith a memorandum of the amounts of said claims, and including also a further sum of eight hundred dollars ($800.00,) which the said Henslee alleged that he had paid or was bound to pay for the annual assessment work for 1882, hired by him to be done for the benefit of the said Brittenstene Silver Mining Company and its property.

That the said Smith informed the said Henslee of the aforementioned purchase of your orator under the said receiver's sale,
16 and told the said Henslee that he had been employed by your orator, and authorized and instructed to pay all the claims against the said property of the said company, and sought to obtain the names of all claimants and amount of their claims, and such evidences as would justify the said Smith in paying off the said claims and securing a legal discharge therefrom.

And, notwithstanding the repeated requests of the said Smith for such evidences, the said Henslee refused and neglected to present the same, but under various pretexts and excuses put the said Smith off, alleging and pretending that the said Crow certificate of purchase and the two Evans certificates of purchase were in the hands of parties in the city of St. Louis, and that he, the said Henslee, would immediately send for the same and confer with the said Smith in relation thereto; and the said Smith, as said attorney for your orator, relying on the representations and promises of the said Henslee, after having repeatedly assured the said Henslee that he was ready and anxious to discharge all legal claims, awaited the presentation
17 of said certificates and evidences of indebtedness; and still further relying on representations that the said sale made under the judgment in favor of the said Crow was made subject to the said attachment and execution in behalf of the said George W. Robison et al., the said Smith continued to wait for the said presentation of the said certificates and legal evidences from the said Henslee.

And your orator further shows that while the said Smith was awaiting the certificates and evidences and relying on the good faith of the said Henslee in the matter, the said Smith learned that the said judgments, on which the sale of said Crow was made, was en-

tered as hereinbefore set out and a transcript thereof filed in the county recorder's office of Chaffee county, on the 17th day of January, 1882, and though your orator did not then and does not now regard the said judgment as a good and valid judgment against the said the Brittenstene Silver Mining Co., or a lien upon the property thereof, for the reasons hereinafter stated, yet in order that he might not be delayed or embarrassed in perfecting his title therein,
18 and to save himself the possible annoyance and expense of litigation, caused to be offered to the said Henslee the amount of said Crow's bid, together with ten per cent. thereon, from the date of the sale to said Crow, which the said Henslee refused to receive, claiming and pretending that the same should have been paid within six months from the said 17th day of June, 1882, the date of the sale to said Crow; and your orator shows that he caused to be offered to the said sheriff, Robert Ray, the amount of the said Crow's bid on the sale of the 17th day of June, 1882, with ten per cent. interest thereon, but that the said sheriff, Robert Ray, declined and refused to receive the same, and said that he had been instructed by the said defendant, Henslee, to refuse to receive the said money.

And, further complaining, your orator respectfully states that the judgment execution and sale hereinbefore mentioned, wherein the said defendant, Joseph R. Crow, was plaintiff and the said Brittenstene Silver Mining Company was defendant, was based up-
19 on a claim of the said defendant, John B. Henslee, against the said company, who was at the time of said judgment, and for a long time previous thereto, the agent of the said the Brittenstene Silver Mining Company for the service of process in the state of Colorado.

That, as your orator is informed and has good reason to believe, the said defendant, John B. Henslee, while thus acting as the agent as aforesaid, conspired, confederated, and combined with the said defendant, Joseph R. Crow, against the said company, and employed the said Crow to bring an action against the said the Brittenstene Silver Mining Company, under a pretended assignment of his, the said Henslee's, claim against the aaid company.

That in pursuance of said fraudulent conspiracy, as your orator is informed, the summons in the said action of the said Crow against the said company was served on the said John B. Henslee on
20 the 9th day of January, 1882, and on the 13th day of January, 1882, the said Henslee, without notifying any officer of the said the Brittenstene Silver Mining Company, and without authority in the premises, appeared in the same County Court of Lake county where said action was brought, and wrongfully and fraudulently confessed judgment as general agent of said company in favor of said Crow, in the sum of fifteen hundred and seventy-seven and thirty-four one-hundredths dollars, ($1,577.34.)

That, as your orator is informed and believes, the said Henslee was at the time said action was brought, and now is, the real owner of

said claim and judgment so pretended to be assigned to the said Crow, and that the said John B. Henslee, further conspiring to injure, embarrass, and defraud the said the Brittenstene Silver Mining Company, its grantee and assigns, did combine with other persons to your orator unknown for the purpose of fraudulently acquiring title to the property of the said the Brittenstene Silver Mining Company,
and for the purpose of depriving the said company and its
21 grantees of the right of redemption, thereby clouding the title
to said property, to the greatin jury and damage of the said company, its grantees and assigns.

And, further complaining, your orator alleges on information and belief that the said John B. Henslee, with other persons unknown to your orator, are the owners of the certificates of sale hereinbefore mentioned as issued to the said Griffith Evans, viz., on the sale of the 19th day of August, 1882, and that, as your orator has been informed, the said John B. Henslee, either for himself or for other persons to your orator unknown, and in pursuance of said conspiracy to acquire a title to said property against the said the Brittenstene Silver Mining Company, did purchase of the said Griffith Evans the two certificates of purchase issued to said Evans, to wit, the one of the 10th day of June, 1882, for one thousand dollars ($1,000,) which your orator has paid, and the one of the 19th day of August, 1882, for one thousand forty-nine and eighty-eight one-hundreths dollars
($1,049.88,) amounting in all to the sum of two thousand
22 forty-nine and eighty-eight one-hundredths dollars ($2,049.88,)
and did pay therefor to the said Griffith Evans only the sum of about nine hundred dollars, ($900.)

And your orator shows that he did on the — day of December pay to the said Henslee the sum of two hundred dollars ($200,) being the cost of the annual work on two several lodes of the said Brittenstene company, which the said Henslee had hired to be done for the year 1882, in accordance with the requirements of the laws of the United States so made and provided. And further, that your orator has paid the sum of six hundred dollars ($600.00,) for the annual work done on six other of the several lodes of the Brittenstene company, hired by the said Henslee to be done, which said sum of six hundred dollars the said Henslee had not paid or become liable for, as hereinbefore stated he had so represented to the said C. Edgar Smith.

And your orator further shows that the sale of personal property made by the said Robert Ray, sheriff, to the said Griffith Evans was
irregular and void, in that no notice of such sale was made
23 and published according to law; and in that the said Robert
Ray, sheriff, did not lawfully levy upon or seize said personal property, and neither by himself, his deputy or agent, ever had possession of the same; and in that the said the Brittenstene Silver Mining Company has during the times hereinbefore mentioned had possession, custody, and control of said property, so as aforesaid pretended to be sold by the said Robert Ray, sheriff.

And your orator is now in absolute possession of said personal property, which has never been removed from the premises of the said the Brittenstene Silver Mining Company.

And your orator further shows that notwithstanding, as hereinafter stated, the property of the said the Brittenstene Silver Mining Company consisted of separate and distinct parcels of property, with distinct and defined boundaries, and each and every of the same of great value, that the said Robert Ray, sheriff, instead of levying upon and selling under the different execution sales hereinbefore stated such portion of said parcels as would be sufficient to satisfy the execution under which the sale was made, levied upon and sold all the different and distinct parcels, and struck them off en masse, instead of separately and successively selling the different tracts or claims, sufficient to satisfy the execution under which the individual sales were made.

24

And your orator shows that, by thus selling, the property of the said Brittenstene Silver Mining Company was wrongfully sacrificed and encumbered, thereby causing wrong and damage to said company and its grantee in redeeming therefrom, inasmuch as the value of each tract was considerably in excess of the amount due on each judgment, and it was so situated that it would sell best if it had been subdivided as located and described in the several location certificates thereof.

To the end, therefore, that the said defendants and each of them, and their confederates when discovered, may to the utmost of their several and respective knowledge, remembrance, and belief, full, true, and perfect answer make, and as fully and particularly as if the same were here repeated, and they and each of them distinctly interrogated thereto, and that your orator may have relief against the said defendants as follows:

25

First. That said defendant Robert Ray, sheriff, may be enjoined and restrained from making, executing, or delivering a deed to the said the Brittenstene Silver Mining Company's property to the said Joseph R. Crow, his assigns or agents, or to any other person, under or in pursuance of the certificate issued to the said Crow on or about the 17th day of June, 1882.

Second. That the said ceritficate of sale issued to the said Joseph R. Crow on or about the 17th day of June, 1882, be declared null and void.

Third. That the said sale of personal property to the said Griffith Evans be adjudged and decreed to be null and void.

Fourth. That the said sale of the 19th day of August, 1882, and the certificate of sale issued in pursuance thereof, be adjudged and decreed to be null and void.

Fifth. That this honorable court would be pleased to order that on payment by your orator of the amount or amounts found to be due as claims against the said property, the said defendants Henslee, Crow and Evans, and each of them, shall by an instrument in writing quit claim and release to your orator their several pretended claims.

26

Sixth. That the defendants pay the costs of this action, and that your orator may have such further and other relief in the premises as the nature and the circumstances of the case may require and to this honorable court shall seem just and proper.

And your orator prays that not only a writ of injunction of the United States of America may issue out of this court, directed to the defendants, to restrain them, their agents, attorneys and servants, and each of them as hereinbefore prayed, but also the writ of subpœna of the United States, to be directed to the defendants and each of them, commanding them and each of them to appear and
27 answer this bill upon a day to be therein specified, and abide such order and decree in the premises as to your honor shall seem meet.

And your orator will ever pray.

(Signed) JOHN E. WHITE,
Agent.
SMITH & KELLOGG,
Solicitors.
(Signed) C. EDGAR SMITH,
Of Counsel.

A.—(Copy.)

STATE OF COLORADO, } ss.
Chaffee co., }

I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of said county, I did, on the 19th day of August, 1882, between the hours of 9 o'clock a. m. and the setting of the sun the same day, expose to public sale certain tracts or parcels of land described as follows, to wit: The lode mining claim known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Alabama, the Georgia, the
28 Great Eastern, the Great Western, the Virginia Tunnel Site; all of said lodes being situated in Chalk creek mining district, Chaffee county, Colorado, and belonging to the Brittenstene Silver Mining Company, as appears in B. 7, p. 450, of the records of Chaffee county, Colorado, to which reference is hereby made; and that Griffith Evans did, in 13 separate and distinct bids, bid the total and aggregate sum of $1,049.88 therefor, which being the highest and best bid, the said tracts or parcels of land were struck off to him, the said Griffith Evans, and that he, the said Griffith, will be entitled to a deed for said premises so sold to him on the 19th day of May, 1883, unless the same be redeemed according to law.

Given under my hand and seal this 19 Aug., 1882.

(Signed) ROBERT RAY,
Sheriff.
By G. D. MERRIAM,
Dep'y.

B.—(Copy.)

STATE OF COLORADO, } ss.
Chaffee county, }

29 I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of Lake county, I did, on the 17th (seventeenth) day of June, 1882, between the hours of 9 o'c. in the morning and the setting of the sun the same day, expose to public auction sale certain tracts or parcels of land described as follows, to wit:

The mining claim known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Virginia Tunnel Site, the Alabama and Georgia, the Great Eastern and Great Western; all of said property is situated on the eastern slope of Grizzly or Chrysolite gulch, in Chalk creek mining district, Chaffee county, Colorado.

For a more particular description reference is hereby made to B 7, p. 450 of the records of said county, and that Joseph R Crow bid the sum of $1,718.27 therefor, which being the highest and best bid, the said tract or parcel of land was struck off to him, the
30 said Joseph R. Crow, subject to an execution in favor of George M. Robison, and that the said Joseph R. Crow will be entitled to a deed for said premises so sold to him on the 19th day of February, A. D. 1883, unless the same be redeemed according to law.

Given under my hand and seal this 24th day of June, A. D. 1882.

(Signed) ROBERT RAY,
Sheriff.
By G. D. MERRIAM,
Dep'y.

C.

STATE OF COLORADO, } ss.
Chaffee county, }

I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of Lake county, I did, on the eighth (8th) day of July, 1882, between the hours of nine o'clock in the morning and the setting of the sun the same day, expose to public sale certain tracts or parcels of land described as follows, to wit:

The Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Alabama, the Georgia, the Great Western, and the Great Eastern; also
31 the Virginia Tunnel site, all of said property being situated upon the easterly slope of Grizzly or Chrysolite mountain, in Chalk creek mining district, Chaffee county, Colorado, and belonging to the within-named defendant, as appears in book 7, page 450, of the records of Chaffee county, Colorado, to which reference is

hereby made, and that Geo. M. Robison bid the sum of $466.55 therefor, which being the highest and best bid the said tract or parcels of land were struck off to him, the said Geo. M. Robison, and that he, the said Geo. M. Robison, will be entitled to a deed for said premises so sold to him on the 8th day of April, A. D. 1882, unless the same be redeemed according to law.

Given under my hand and seal this 8th day of July, A. D. 1882.

(Signed) ROBERT RAY, [SEAL.]
Sheriff.
By GEORGE D. MERRIAM,
Deputy.

Recorded July 8th, 1882, at 2.15 o'clock p. m.

(Signed) JAMES H. JOHNSTON,
Recorder.
W. H. KELLOGG,
Deputy.

32 D.

G. W. EVANS & BRO.
v.
BRITTENSTENE.

G. Evans, To sheriff of Chaffee county, dr.

Personal property sold, engine house at mines B. S. M. Co., July 12, 1882..... $380.10

Schedule of personal property sold:

1 steam boiler, with engine and air-compressors attached.
2 tripods.
12 1⅛ in. drills.
31 pieces gas pipe.
2 iron wheelbarrows.
1 grindstone and frame.
1 steel vise.
1 anvil.
1 blacksmith bellows.
1 set blacksmith tools.
113 drills.
1 barrel cylinder oil.
1 moil.
3 tamping irons.
4 striking hammers.
1 axe.
5 shovels.
33 1 hand axe.
3 spoons.
1 adze.
1 Economy No. 88 cook stove, with furniture.

Rec'd pay.

(Signed) ROBERT RAY, *Sheriff*,
By G. D. MERRIAM, *Deputy*.

E.—(Copy.)

STATE OF COLORADO, *Chaffee co.* } ss.

I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of said county, I did on the 10th day of June, 1882, between the hours of 9 o'clock in the morning and the setting of the sun the same day, expose to public sale certain tracts or parcels of land described as follows, to wit: The lode mining claims known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Alabama, the Georgia, the Great Eastern, the Great Western, also the Virginia Tunnel site, all of
34 said property being situated on the easterly slope of Grizzly or Chrysolite mountain, in Chalk creek mining district, Chaffee county, Colorado, and belonging to the Brittenstene Silver Mining Company, defendants, as appears in book 7, p. 450, of the records of said Chaffee county, reference to which said book and page and records referred to therein is hereby made for particular description, together with the buildings theron standing, to wit, the engine house and boarding or sleeping houses, being the same property attached on the 3d day of February, 1882, at the suit of B. W. Evans against the Brittenstene Silver Mining Company, and that Griffith Evans bid the sum of $1,000 therefor, which being the highest and best bid the said tract or parcels of lands were struck off to him, the said Griffith Evans, and that he, the said Griffith Evans, will be entitled to a deed for said premises so sold to him on the 10th day of March, 1882, unless the same be redeemed according to law. This sale is made subject to an execution and sale in favor of George M. Robison for $466.55.

35 Given under my hand and seal the 17th day of July, 1882.

(Signed) ROBERT RAY, *Sheriff*,
By G. D. MERRIAM, *Dep'y.*

F.

Whereas R. W. Evans and Griffith Evans, under the firm name and style of R. W. Evans and Bro., of the county of Chaffee and state of Colorado, did, at the March term of the County Court for the said county of Chaffee, on the 17th day of April, A. D. 1882, recover a judgment against the Brittenstene Silver Mining Company, a corporation organized and existing under and by virtue of the laws of the state of New York, for the sum of two thousand dollars and — cents and costs of suit, upon which execution was issued, dated the 17th day of April, A. D. 1882, directed to the sheriff of said county of Chaffee to execute, and by virtue of said execution the said sheriff of the said county of Chaffee levied upon the lands hereinafter described, and on the 10th day of June,
36 A. D. 188 , the same were struck off to Griffith Evans, one of the plaintiffs, he being the highest and best bidder there-

for, and the time and place of sale thereof having been duly advertised according to law;

And whereas the said sheriff of the said county of Chaffee did subsequently give to the said Griffith Evans a certificate in writing, reciting the amount of said Griffith Evans' bid at the aforementioned sale, and the time when the said Griffith Evans would be entitled to a deed to the lands then sold, and reciting also that said sale was made subject to an execution and sale to one George M. Robison for the sum of four hundred and sixty-six and 55-100 ($466.55) dollars;

And whereas said recital of the amount bid at said sale by said Griffith Evans, viz., the sum of one thousand ($1,000) dollars, is a correct recital;

And whereas the said recital that said sale was subject to an execution and sale to one George M. Robison for the sum of four hundred and sixty-six & 55-100 ($466.55) dollars was erroneous, said sale to Robison having been made subsequent to said sale to said Griffith Evans;

37 And whereas the said sheriff of the said county of Chaffee is requested and petitioned by one John E. White, agent, of the city, county, and state of New York, that he, the said John E. White, agent, may redeem the lands so sold to said Griffith Evans, by paying to the said sheriff who sold the same, for the benefit of said Griffith Evans or his assigns, the sum of money which has been paid by the said Griffith Evans, together with 10 per cent. interest from the time of such sale;

And whereas evidence has been presented to me that said John E. White, agent, has become the purchaser, and is now the owner, of the equity of redemption of the said the Brittenstene Silver Mining Company—

Now, therefore, in consideration of the premises and the sum of one thousand and fifty ($1050) dollars, being the amount of said Griffith Evans' bid, together with interest thereon at the rate of 10 p. cent. per annum from the date of said sale to said Griffith

38 Evans, the receipt whereof is hereby acknowledged, I, R. M. Painter, under-sheriff of the said county of Chaffee, have granted, bargained, and sold, and by these presents do convey unto the said John E. White, agent, his heirs, executors, administrators, and assigns, the following described tracts or parcels of land, situated in Chalk creek mining district, county of Chaffee and state of Colorado:

The Lilly Lode,	recorded	in Book	10, p. 287.
The Rebecca Lode,	"	"	11, p. 350.
The Virginia Lode,	"	"	10, p. 285.
The Highland Lode,	"	"	11, p. 352.
The Bob Lee Lode,	"	"	10, p. 286.
The Quincy Lode,	"	"	10, p. 594.
The St. Louis Lode,	"	"	11, p. 351.
The Morning Star Lode,		"	11, p. 351.
The Virginia Tunnel Site,		"	11, p. 164.

The Alabama and Georgia lodes, both being enclosed within the side lines of the Quincy lode; the Great Eastern and Great Western lodes being within the side lines of the Morning Star lode. All of said property being on the easterly slope of Grizzly or Chrysolite mountain, on the declivity towards Grizzly gulch. Also one house, known as the sleeping house; the engine house, standing on
39 or near said mining claims; to have and to hold unto the said John E. White, agent, with all the appurtenances thereof, his heirs and assigns forever.

And I hereby certify that this instrument is given pursuant to section 1429 of the general laws of the state of Colorado, of an act entitled "judgments and executions."

Given under my hand as sheriff of said county of Chaffee this 9th day of December, A. D. 1882.

(Signed) ROBERT RAY, *Sheriff*,
By R. M. PAINTER, *U. S.*

Witness:
M. J. COCKRONE.

STATE OF COLORADO, }
County of Chaffee, } *ss.*

On this 9th day of December, A. D. 1882, personally appeared before me, John G. Evans, clerk of the District Court of the fourth judicial district in and for the county of Chaffee, R. M. Painter, under sheriff, personally known to me to be the person who subscribed the foregoing instrument as under sheriff, and acknowledged that he signed, sealed, and delivered the same as his voluntary and official act for the uses and purposes therein named.

40 Witness my hand and the seal of said court this 9th day of December, A. D. 1882.

[DISTRICT COURT SEAL.] (Signed) JOHN G. EVANS, *Clerk*,
By M. J. COCHRANE, *Dep.*

STATE OF COLORADO, }
County of Chaffee, } *ss.*

I hereby certify that this instrument was filed for record in my office at 4.15 o'c. p. m. Dec. 9, 1882, and is duly recorded in B. 24, p. 466.

(Signed) JAMES H. JOHNSTON,
Recorder.
By W. H. KELLOGG, *Deputy.*

G.

GEORGE M. ROBISON
vs.
THE BRITTENSTENE SILVER MINING COMPANY.

STATE OF COLORADO, *County of Chaffee,* } *ss.*

I, Robert Ray, sheriff of said county, do hereby certify that John E. White, agent, has this day redeemed from sheriff's sale the real estate sold by virtue of an execution issued out of the County
41 Court of Lake county and to the sheriff of the aforesaid county of Chaffee directed, dated the 9th day of June, 1882, and delivered in favor of George M. Robison, doing business, and against the Brittenstene Silver Mining Company, the said sale having been made for the sum of four hundred and sixty-six & 55-100 ($466.55) dollars, and a certificate thereof duly recorded in B. 1 of Liens, p. 384, Chaffee county, said real estate being known and described as follows, to wit: The Lilly lode, the Virginia lode, the Rebecca lode, the Highland lode, the Bob Lee, the Quincy lode, the St. Louis lode, the Morning Star lode, the Alabama and the Georgia lodes, the Great Eastern and the Great Western lodes; also the Virginia tunnel site, being situated upon the easterly slope of Grizzly or Chrysolite mountain, in Chalk creek mining district, Chaffee county, Colorado, and belonging to the Brittenstene Silver Mining Company, as appears in Book 7, p. 450, of the records of Chaffee county, Colorado.

Witness my hand and seal at Buena Vista this 5th day of January, A. D. 1883.

(Signed) ROBERT RAY, [SEAL.]
Sheriff of Chaffee co., Colo.,
By GEO. D. MERRIAM, *Deputy.*

42 STATE OF COLORADO, *Chaffee co.,* } *ss.*

Filed for record the 5th day of January, A. D. 1883, at 2.45 p. m., and recorded in B. 24 of M. R., p. 496, and examined.

(Signed) JAMES H. JOHNSTON, *Recorder,*
By W. H. KELLOGG, *Deputy.*

(Endorsed:) United States Circuit Court for the district of Colorado, 1126; John E. White, agent, *vs.* Joseph R. Crow, John B. Henslee, Griffith Evans, and Robert Ray, sheriff; in equity; bill & exhibits; filed Feb. 12, 1883; signed Edward F. Bishop, clerk; Smith & Kellogg, solicitors for complainants, 1 McClelland Block, Denver, Colo.

And thereupon, and on the same day, a writ of subpœna was issued out of and under the seal of said court, and in said cause, and the said writ of subpœna is in words and figures as follows, to wit:

43 The United States of America.

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

The President of the United States of America to Joseph R. Crow, J. B. Henslee, Griffith Evans and Robert Ray, sheriff, greeting:

You and every of you are hereby commanded that you appear before the judges of the Circuit Court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in April next, (it being the 2d day of April, A. D. 1883,) to answer the bill of complaint of John E. White, agent, this day filed in the office of the clerk of said court in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States of America, and the seal of the said Circuit Court, at the city of Denver aforesaid, this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the 107 year.

[SEAL.] (Signed) EDWARD F. BISHOP, *Clerk.*
By WM. E. ROGERS, *Deputy Clerk.*

Memorandum.—The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

(Signed) EDWARD F. BISHOP, *Clerk.*
By WM. E. ROGERS, *Deputy Clerk.*

44 *Marshal's Return.*

DISTRICT OF COLORADO, *ss.*

DENVER, *March 19th*, 1883.

I have duly executed the within writ by personally delivering a true copy of the within to Robert Ray, sheriff, at Denver, Arapahoe county, Colorado, February 14th, A. D. 1883.

This writ returnable this 19th day of March, A. D. 1883, without further service, by order of plaintiffs' attorney.

Marshal's fees: Service, 1 person at $2.00 ea., $2.00.
Total, $2.00; paid by Smith & Kellogg.

(Signed) WALTER A. SMITH, *Marshal.*
By SIM W. CANTRIL, *Deputy Marshal.*

(Endorsed:) Gen. No. 1126; Circuit Court of the United States for the district of Colorado; in chancery; John E. White, agent, *vs.* Joseph R. Crow et al.; subpœna; returnable to rule day, first Monday in April, A. D. 1883; Edward F. Bishop, clerk; filed this 19 day of Mar., A. D. 1883; (signed) Edward F. Bishop, clerk; by ——— ———, deputy clerk.

45 And afterwards and on, to wit, the 26th day of February, A. D. 1883, came again the said complainant by his solicitor as aforesaid, and filed in said court and in said cause a stipulation. And the said stipulation is in words and figures as follows, to wit:

Stipulation.

In the United States Circuit Ct., district of Colorado.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW, JOHN B. HENSLEE, GRIFFITH EVANS, and ROBERT RAY, sheriff. } In equity.

It is hereby stipulated that whereas a bill of complaint now filed herein on the 12th day of February, 1883, and a notice for a motion for injunction has been served on the above defendants, returnable at chambers on the 16th day of February, inst.—

That the above named sheriff will not issue any deed under a certificate of sale issued on the 17th day of June, 1882, to
46 Joseph R. Crow, affecting the property formerly of the Britenstene Silver Mining Company.

That the said White, complainant, shall be deprived of none of his rights under a certificate of sale issued to said Griffith Evans on the 19th day of August, by virtue of adjournment of hearing on motion and bill, which is hereby agreed as set down for the 23rd day of February, inst., at 10 o'clock a. m.

(Signed) JOHN E. WHITE, *Agt.*,
By C. EDGAR SMITH.
JOSEPH R. CROW,
JOHN B. HENSLEE,
GRIFFITH EVANS &
ROBERT RAY,
By MARKHAM, PATTERSON & THOMAS.

Dated Feb. 16th, 1882.

(Endorsed:) 1126; U. S. Circuit Court, dist. of Colorado; John E. White, agt., *against* Joseph R. Crow et al.; in equity; stipulation in chambers; filed Feb. 16th, 1883; (signed) Edward F. Bishop, clerk; C. Edgar Smith, counsel for complainant.

47 And afterwards and on, to wit, the 20th day of February, A. D. 1883, came again the said complainant by his solicitor

as aforesaid, and filed in said court and in said cause amendments to his bill of complaint. And the said "amendments to the bill of complaint" is in words and figures as follows, to wit:

Amendments to Bill of Complaint.

United States Circuit Court, district of Colorado.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW, JOHN B. HENSLEE, GRIFFITH EVANS, and ROBERT RAY, sheriff. } In equity.

To the judges of the United States Circuit Court, district of Colorado:

And now comes the above-named complainant and craves leave of this honorable court to amend the bill of complaint filed herein on the 12th day of February, 1883, in the following particulars:

1. By adding on page 7 of said bill and after the words "eighty-eight hundredths dollars, ($1,049.88,) ending the 9th line, the following:

48 And your orator has been and is now ready to pay to the party entitled thereto the balance of said judgment in favor of said Evans for ($1,983,) viz., the sum of ($933), with the interest due thereon, and now offers to pay into this court for the benefit of said Evans, or his assigns, or whoever is entitled thereto, any sum which shall be found to be due thereon; but in view of the fact that, as your orator alleges, the said Evans acquired no rights under the sale made to him subsequently to the sale of the 10th day of June, 1882, from which last mentioned sale your orator, as hereinbefore stated, has redeemed; and that the sale of personal property on July 12, 1882, and the sale of real property on the 19th day of August, 1882, were made on the same judgment as the sale of June 10th, 1882, viz., said judgment for ($1,983), and that the said Evans has disposed of and transferred his interest in the two certificates of sale of real property, to wit, the certificates of June 10th, 1882, and August 19, 1882. Your orator has been and is now unable to determine what rights were thus transferred, and is without any knowledge as to whom the balance on said judgment should be paid, and whether or not the said judgment was assigned with the said certifi-
49 cate; and therefore your orator submits himself to the order and decree of this court in the premises.

2. By adding at the end of the 2d line on the 16th page of said bill the words "contrary to the statute so made and provided."

And your orator, as in duty bound, will ever pray.

(Signed) SMITH & KELLOGG,
Solicitors for Complainant,
1 McClelland Block, Denver, Colo.
C. EDGAR SMITH,
Of Counsel.

(Endorsed:) No. 1126; U. S. Circuit Court, district of Colorado; John E. White, agent, against Joseph R. Crow, John B. Henslee, Griffith Evans, and Robert Ray, sheriff; amendments to bill of complaint; filed Feb. 20th, 1883; (signed) Edward F. Bishop, clerk; Smith & Kellogg, solicitors for complainant, 1 McClelland block, Denver, Colo.

And afterwards and on, to wit the 23d day of February, A. D. 1883, came the said defendants, by Markham, Patterson and Thomas, their solicitors, and filed in said court and in said
50 cause their answer to the said bill of complaint.

And the said answer is in words and figures as follows, to wit:

In the United States Circuit Court for the district of Colorado.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW, JOHN B. HENSLEE, GRIFFITH EVANS, ROBERT RAY, sheriff, ROBERT RANKIN, L. C. NELSON, H. M. NOEL, J. L. LOKER, W. N. LOKER, JAMES STREETER, O. H. SIMONS, defendants. } In equity.

The joint and several answer of Joseph R. Crow, John B. Henslee, Griffith Evans, Robert Ray, sheriff, Robert Rankin, L. C. Nelson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons, the defendants to the bill and amended bill of complaints of John E. White, agent, the complainant.

51 The said defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

They deny that the said complainant, on the 1st day of December, 1882, or at any other time, became the purchaser for a valuable or any other consideration at a public receiver's sale or otherwise of the personal property of the Brittenstene Silver Mining Company, situated in Grizzly gulch, in Chalk creek mining district, in the county of Chaffee and state of Colorado. They deny that the complainant ever became the purchaser of the franchise of the said company, and they deny that the said sale of the said personal property was ever duly or legally authorized under the authority of the Supreme Court of the county and state of New York.

Defendants say that they or any or either of them do not know and have never been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, whether said complainant on the 1st day of December, 1882, became the purchaser for a valuable consideration at a public receiver's sale duly and
52 legally authorized by the Supreme Court of the county and state of New York of the real property of said company situ-

ated in Grizzly gulch, in Chalk creek mining district, in the county of Chaffee and state of Colorado, as is in said bill alleged.

Defendants deny that at the time of said alleged sale and purchase the property of said Brittenstene company consisted of any personal property whatever in Chaffee county, but say that all said company's personal property in said county had long since, to wit, on July 12th, 1882. been sold by the sheriff of said county to said defendant Griffith Evans. Defendants admit that at the time of said alleged sale and purchase the said Brittenstene company's real property consisted of an equity of redemption in twelve lode mining claims and a tunnel site, and that said company then owned said claims and tunnel site, subject to the liens of several judgments, and subject to several sales enumerated in said bill.

Defendants deny that the said property of the said Brittenstene company was or is worth the sum of $50,000.00, and say that said property consists of prospect mining claims, which have
53 never paid the expense of working them, and whether they will ever pay or be valuable is a question yet to be determined. Defendants say that, while it is true that each of said mining claims had individual and distinct locations, they did not have distinct boundaries, and all of said claims adjoined each other and were so located with reference to each other and the slope of the mountain whereon they were located; that said claims did not have a separate or distinct market value, but were only valuable as a whole property, if any value they had, and could only be worked economically through the tunnel, which runs at right angles to said claims and was run for the purpose of working said property as a whole property.

Defendants say that they or any or either of them do not know and have never been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, whether subsequent to said receiver's sale, and under the authority or order of the Supreme Court of the county and state of New York, said complainant received from said receiver a duly or properly executed deed of conveyance of all or any of the property of said company, or a deed of convey-
54 ance from the said company, or whether under order of said Supreme Court said company had executed or delivered to said receiver a deed of conveyance to all or any of said property, or whether any or all of said deeds were ever filed for record in the recorder's office of the county of Chaffee, state of Colorado.

Defendants deny that subsequent and immediately after said receiver's alleged sale said complainant actively or diligently took steps to ascertain the condition of said property, or the number or amounts of the liens or claims on the said property, and deny that complainant forwarded money sufficient to pay off or settle all of said claims or liens, or granted authority to do all things necessary to perfect his alleged title.

Defendants admit that at the time of complainant's alleged pur-

chase there were certain claims, liens, judgments and sales relating to said property.

Defendants admit everything alleged in said bill in reference to the judgment, execution, and sale in favor of and to said Griffith Evans, except that they deny that any personal property was
55 sold on June 10th, 1882, under said execution, and say that only the real property belonging to said company was sold on that day by the sheriff, and they admit that Robert Ray, sheriff, made and executed a certificate of sale to Griffith Evans of said real property.

Defendants admit that Joseph R. Crow did obtain a judgment against said company on Jan. 13th, 1882, in the Lake County Court of Colorado for the sum of $1,594.04, and did on June 17th, 1882, at a sheriff's sale, on an execution issued on said judgment, buy all the mining claims and tunnel site and real property belonging to said company in said Chaffee county, and did receive a certificate of sale therefor from Robert Ray, sheriff of said county, but they deny that at said sale said Crow purchased any of the personal property of said company, and they say while it is true that said certificate of sale recites that it was made subject to an execution in favor of George M. Robison, yet in truth and in fact it, the sale, was not made subject to that or any other execution or sale, and said clause was inserted in said certificate against the protest of said
56 Crow made at the time, and said Crow only accepted said certificate containing said clause after he had tried and been unable to obtain from said sheriff a certificate without it.

Defendant admits everything alleged in said bill in reference to the judgment in favor of George M. Robison, the execution thereon, the sale thereunder, and the attachment in said action, except that they deny that said writ of attachment in said suit of Robinson was levied on the real property of said company prior to the 20th day of January, 1882, and they deny that any of the personal property of said company was sold under the Robinson execution.

Defendants say that a transcript of the judgment in favor of said Joseph R. Crow was duly recorded in the recorder's office of Chaffee county, Colorado, on the 17th day of January, A. D. 1882.

Defendants say that said Robert Ray, sheriff, did on the 12th day of July, 1882, under an execution issued on the judgment in favor of Griffith Evans, sell all the personal property in Chaffee county, Colorado, belonging to said company, to Griffith Evans for the sum of $380.30, and did make to said Evans a bill of sale of
57 said personal property, and say that there was nothing sham or pretended in either said sale or execution, but that both were made in good faith and according to law.

Defendants admit what is alleged in said bill in reference to the second sale of said Brittenstene company's *company's* property under a second execution on said Evans judgment, and of a certificate of sale being made and delivered to said Evans, but they deny that any of the personal property was sold at said second sale.

Defendants admit that there was a judgment against said company for $128.27 in favor of A. Falkenan, entered on June 26th, 1882, and a judgment against said company for $500.00 in favor of E. C. Howe, entered on the 4th day of September, 1882, the former in Lake county and the latter in Chaffee County Court, state of Colorado, and that no sales were made thereunder.

Defendants admit that the said Howe judgment and the said Faulknan judgment were paid by paying the amounts of said
58 judgments to the clerks of the court wherein said judgments were rendered, and that the amount for which said property was sold under the sale of June 10th, 1882, to Griffith Evans, was paid to the sheriff, Robert Ray, and that the amount for which said property was sold under the Robison judgment was paid to Robert Ray, sheriff, as in the said bill is alleged, but defendants say they have not and cannot obtain sufficient knowledge or information to form an opinion or base a belief as to who paid said judgments, or who redeemed said property from said sales, or whether complainant received from said sheriff and clerks certificates of satisfaction and redemption of said judgments and from said sales.

Defendants admit that said property has not been redeemed from the sale to said Crow on June 17th, 1882, for $1,783.88.

Defendants say that to the extent of $380.30, the balance due on said Evans judgment, has been been satisfied by the sale to Evans of the personal property of said company.

Defendants say that they are willing that the complainant should pay into court or to the parties entitled thereto, or to the
59 clerk of the Chaffee County Court, the balance due on the Evans judgment with interest thereon at 10 per cent. per annum from the date of judgment until paid.

Defendants say that as to whether the complainant, about the 7th day of December, 1882, employed C. Edgar Smith or sent him to Leadville for the purpose of conferring with defendant Henslee in relation to the claims, liens, and judgments against said company, or that he did so for the reasons that said Henslee had been the agent of said company, and that he thought said Henslee knew of all proceedings affecting said property, and that complainant knew of no other person possessed of such information, have not and cannot obtain sufficient knowledge or information upon which to form an opinion or base a belief.

Defendants deny that at that or any other time said Henslee informed said Smith that he either owned or controlled all the judgments and claims against said Brittenstene company's property, and admit that said Henslee gave to said Smith, to the best of his ability and knowledge, a memorandum of all said claims, the amounts thereof, when they were due, the names of the claimants,
60 and the amounts and character of their claims, and they admit that said Smith sought to obtain from said Henslee the evidences of said claims.

Defendants deny that said Henslee refused or neglected to present

such evidences; deny that said Henslee, under any pretext or excuse whatever, put the said Smith off; that he alleged or pretended that the Crows' certificates of sale and the two Evans' certificate of sale were in the hands of parties in St. Louis, and deny that said Henslee said he would immediately send for the same and confer with said Smith in relation thereto; deny that said Smith relied on the promises or representations of said Henslee, or awaited the presentation of said certificates or evidences of indebtedness, and deny that said Smith relied on the representations that the sale to Crow was made subject to the execution in favor of Robinson, and deny that said Smith awaited the presentation of the said certificates or legal evidences from the said Henslee.

Defendants deny that the said Smith ever tendered or offered to pay to either said Henslee or the said sheriff the amount bid
61 by said Crow at the sale to him of said property, until long after the period of redemption had expired. They deny that either said Smith or said complainant did not know of said Crow's sale or the filing of the transcript of the Crow judgment in Chaffee county until said Smith was awaiting said evidences from said Henslee.

Defendants deny that said John B. Henslee, while acting as agent for said company, or any other time, conspired or confederated or combined with the said Crow against the said company, or employed the said Crow to bring an action against the said company, and deny that the assignment of said Henslee's claim against the company was pretended.

Defendants deny that in pursuance of said fraudulent or other conspiracy the summons in said action was served on said Henslee; they deny that said Henslee, in pursuance of any conspiracy, or wrongfully or fraudulently or without authority, or without notifying any officer of said company, confessed judgment for said Crow in the sum of $1,577.34.

Defendants deny that at the time said action was brought, or now, said Henslee was or is the owner of said claim or judgment, and deny that said claim was pretended to be assigned to said Crow.

62 Defendants deny that said Henslee ever conspired to injure, embarrass or defraud said Brittenstene Silver Mining Company, or its agents or grantees or assigns, or did ever combine with any other person or persons for the purpose of fraudulently acquiring title to the property of the Brittenstene company, or for the purpose of depriving said company or its grantees of the rights of redemption; they deny that by any such conspiracy the title to said property was clouded, or that thereby said company, or its grantees or assigns, were injured or damaged.

Defendants deny that said Henslee is the owner, or in any interested in the certificate of sale issued to Griffith Evans on August 19th, 1882. They deny that said Henslee, either for himself or others, in pursuance of any conspiracy whatever against said company, or its grantees, purchased of said Evans the two certificates of

purchase issued to said Evans, and deny that they paid therefor only the sum of $900.00, and deny that said Henslee was or is interested in either of said certificates, or was or is the owner of either of them.

63 Defendants deny that said Henslee represented to said Smith that he (Henslee) was liable for the assessment work on said mining claims, or had paid the same; and as to whether complainant has paid the sum of $800 for assessment work on said claims for the year 1882, these defendants have not and cannot obtain sufficient knowledge or information upon which to form an opinion or base a belief.

Defendants deny that the sale of said personal property by said sheriff to Griffith Evans was irregular or void; deny that no notice of such sale was made and published according to law; deny that said sheriff did not lawfully levy upon and seize said personal property, and deny that said sheriff never had control and possession of said property, and deny that said Brittenstene company during the time of levy, publication of notice of sale, and sale, had possession or custody or control of said property.

Defendants deny that said property has never been out of the possession of said company, and say that if said complainant is in the

64 possession of said personal property his possession thereof is wrongful and without right.

Defendants deny that the property consisted of separate and distinct parcels, with distinct and defined boundaries, and say that all of said claims adjoin and form one entire body of land and that several of said claims cross and intersect and overlap the rest; they deny that each and every of said claim is of great value, and that as to whether said Robert Ray, sheriff, instead of levying upon and selling under the different execution sales such proportions of said parcels as would be sufficient to satisfy the execution under which the sale was made, levied upon and sold all the different parcels and struck them off en mass, these defendants have not and cannot obtain information sufficient to base a belief.

Defendants deny that, by thus selling, the property of said company was wrongfully or otherwise sacrificed or encumbered, and deny that said company was thereby wronged or damaged, or its grantees wronged or damaged, and deny that the value of each tract exceeded

65 the amount due on each judgment, and deny that it was so situated that it would sell best if it had been subdivided, but, on the contrary, say that it would not have sold as well.

And these defendants, further answering, say that before the institution of the suit of Joseph R. Crow *vs.* The Brittenstene Company, John B. Henslee for a good and valuable consideration and in good faith sold, transferred, and assigned all his right, title, and interest in and to the claim sued on to the said Crow; that the claim so assigned was a true and valid claim against said company.

That the said Henslee notified said company by writing to its officers that he had as agent for said company suffered judgment

to be entered against said company for the amount of said Crow's claim, and so notified them immediately after said judgment was rendered.

That the complainant in this action was at said time of notification and long prior thereto, and up to the alleged sale of the property of said company by said receiver, an officer and director of said company; that defendant Henslee notified said company likewise of all the other judgments and claims against said company;
66 that said company, acting by its officers, including said complainant, acquiesced in, acknowledged, and confessed the said judgments and said claims; that said company procured said Henslee to obtain said judgment creditors to stay executions on said judgments, and promised said judgment creditors, including said Crow and Evans, to pay said judgments if they would stay executions thereon; that said judgment creditors did stay execution on said judgments for about five months, relying upon the promise of said company to pay said judgments.

Further answering, defendants say, on information and belief, that at the sheriff's sale under the execution issued on the Crow judgment, the said sheriff offered and cried said real property then sold, and tried to sell the same in separate and distinct parcels according to their boundaries, but could not get a bid therefor in that way, and finally offered and sold the *the* whole property.

Defendants say that said Crow on the 19th day of July, 1882, sold, transferred, and assigned for a valuable consideration
67 his certificate of sale of said property and all his right, title, and interest therein and thereunder to said property, to his co-defendants, said Robert Rankin, L. C. Nelson, H. M. Noel, J. R. Loher, W. N. Loher, James Streeter and O. H. Simons, and said Crow has no interest whatever in the subject-matter of this suit.

Defendants say that said Evans for a valuable consideration, to wit, for the sum of $915, sold, transferred, and assigned his certificate of sale of said property delivered to him on the 10th day of July, 1882, and all his right, title, and interest therein and thereunder to said property, to the same said co-defendants, and likewise sold to them his certificate of sale of said property delivered on the 19th day of August, 1882, to him, for a valuable consideration, and transferred and assigned to them all his right, title, and interest therein and thereunder to said property and to said judgment, and said Evans has no interest whatever in said judgment, certificate of sale, or in said real property; that said Evans has never sold said personal property bought by him at the sheriff's sale on July 12th, 1882, but is yet the owner and entitled to the possession
68 thereof.

Defendants say that said Henslee has not any interest whatever in this litigation or in the subject-matter thereof, and is improperly joined as a party defendant thereto.

Defendants say that the judgment of said Crow was the first and prior lien on said real property, and the lien was perfected by

the levy of an execution and sale of said real property to said Crow on June 17th, 1882, and that said Brittenstene company, or its grantees or assigns, never redeemed said property, and never offered to redeem it until after the period in which it or they could have redeemed it had expired, and never tendered the amount necessary to redeem said property from said sale to Crow, to any one, to the said Crow, or to his said assigns, or to said sheriff, and that the time within which said company or its grantees could have redeemed said property expired on the 17th day of December, 1882.

Defendants say that the complainant and his att'y, said Smith, both well knew when said time of redemption expired; that defendants, entitled thereto, were ready and willing at any and all times before said time of redemption expired to receive and *and*
69 accept the amount of money necessary to redeem said property; that said Henslee offered to redeem said property if said complainant or his att'y, said Edgar Smith, would furnish him with the money to do so with; that said C. Edgar Smith declined to do so, and answered that he would redeem by paying the money to the sheriff; that said Smith notified the complainant of the amount required to redeem from said Crow's sale and the time when he was compelled by law to redeem, but notwithstanding their said knowledge and said notification, the complainant and said Smith willfully and negligently refused to redeem said property, and suffered the time to expire without redeeming it of their own free will.

Defendants say that the facts of the existence of said judgments, of their respective priorities, of their amounts of the respective sales thereunder, of the time within which the property sold under the executions up said judgments could be redeemed, were all matters of public record, open to the inspection of every one in the said counties of Lake and Chaffee; that they believe, as in said bill is alleged, that said C. Edgar Smith is an att'y at law, and one of the
70 solicitors in this suit for complainant; they say that they are informed and believe that said Smith, before the time to redeem said property from the Crow sale had expired, thoroughly examined the records of said counties and ascertained all the facts concerning and connected with said judgments and sales and their respective priorities, and reported the result of his investigations to complainant, and that said complainant and his said attorney relied entirely and exclusively on the knowledge thus acquired.

Defendants say that said complainant has acknowledged the validity of the sale of said personal property to said Evans, and the title of said Evans thereto, and has offered, through said Smith, to buy the same of said Evans, and offered said Evans $500.00 therefor.

That said complainant has, since the time to redeem said property from said Crow sale expired, acknowledged and acquiesced in the validity of the judgment in favor of Crow of the sale and all proceedings thereunder, and has attempted to purchase the same, and has offered to redeem said property from said sale and to pay
71 the full amount bid by said Crow and interest.

And these defendants deny all and all manner of unlawful

combination and confederacy wherewith they are by said bill charged, without this, that there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto and *and* not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and said defendants pray that said Robert Rankin, H. M. Noel, L. C. Nelson, W. N. Loher, J. R. Loher, James Streeter and O. H. Simons, who, with said Griffith Evans, are the real parties in interest in this suit, and who are the owners by said purchase of the said Crow's and Evans' certificates of sale of the real property embraced therein, and of all right, title and interest thereunder to said property, may be made parties defendant to this action, and
72 that this may be taken for their answer to said bill; and defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) MARKHAM, PATTERSON & THOMAS,
of Counsel.

O. H. SIMONS. [SEAL.]

L. N. BUCK, *Counsel for Def'ts.*

STATE OF COLORADO, } *ss.*
County of Lake, }

On this 21st day of February, A. D. 1883, before me personally appeared O. H. Simons, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

[SEAL.] J. C. HARKNESS,
Notary Public.

(Endorsed:) No. 1126; United States Circuit Court for the district of Colorado; John E. White, agent, *vs.* Joseph R. Crow et al., defendants; in equity; answer; filed Feb. 23, 1883; (signed) Edward F. Bishop, clerk.

72½ And afterwards and on, to wit, the 27th day of February, A. D. 1883, came again the said defendants by their solicitors as aforesaid, and filed in said court and in said cause a stipulation for taking testimony.

And the said stipulation is in words and figures as follows, to wit:

In the Circuit Court of the United States for the district of Colorado.

JOHN E. WHITE, agent,
versus
JOS. R. CROW et als. } In chancery.

It is hereby stipulated by the parties to this suit, by and through their respective attorneys, that the plaintiff shall take his evidence in support of the bill within twenty-five days from this date, and the defendants shall take their evidence in defense within thirty days thereafter, and the plaintiff shall take his evidence in reply within five days after the said thirty days have expired. And testimony
73 out of the state shall be taken by deposition, commissions therefor to be taken out by either party, whether in term or vacation; notice being waived, except that interrogatories shall be served upon the adverse party, that he may append cross-interrogatories to be answered by the witness; no more time to be consumed in preparing said cross-interrogatories than necessary therefor; and testimony within the state may be taken by deposition or orally before a court examiner, as the party taking the testimony may elect; it being the purpose of this stipulation to expedite the taking of all testimony in said case, that a speedy determination of the rights of the parties hereto may be had; and this stipulation shall be made an order of court herein.

(Signed) T. M. PATTERSON,
of Defendants' Attorneys.
(Signed) C. EDGAR SMITH,
of Counsel for Complainant.

(Endorsed:) No. 1126, chancery; John E. White, agent, *versus* Joseph R. Crow et al.; stipulation for taking testimony; filed Feb. 27, 1883; (signed) Edward F. Bishop, clerk.

74 And afterwards and on, to wit, the 27th day of February, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1882, of said court—present: the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Bill for an Injunction and for other Relief.

JOHN E. WHITE, agent,
vs.
JOHN R. CROW et al. } In chancery.

At this day come the said defendants by T. M. Patterson, esq., their solictor, and present to the court a stipulation touching testimony herein; and thereupon, in pursuance of said stipulation, it is ordered by the court that the said complainant shall take his evidence in support of the bill of complaint herein within twenty-five (25) days from this day, the said defendants shall take their evidence

in defense within thirty (30) days thereafter, the said complainants shall take evidence in reply within five (5) days after the said thirty (30) days have expired; testimony by either party taken out of the said district shall be taken by deposition, commissions therefor to be taken out by either party, whether in term time or in vacation. No notice need be given to the opposite party of intention to take said deposition, except that copies of the interrogatories shall be served upon the opposite party. Testimony taken within the said district may be taken orally or before an examiner in chancery of this court, as the party taking the said testimony may elect.

And afterwards and on, to wit, the 27th day of February, A. D. 1883, the same being one of the regular judicial days of the October term, A. D. 1882, of said court—present: the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Bill for an Injunction and for other Relief.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW, JOHN B. HENSLEE, GRIFFITH EVANS, and ROBERT RAY, sheriff. } In chancery.

To Joseph R. Crow, John B. Henslee, Griffith Evans, Robert Ray, sheriff, Robert Rankin, L. C. Nelson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons:

The complainant in the above-entitled cause having commenced an action in the United States Circuit Court for the district of Colorado against the above-named defendants, Joseph R. Crow, John B. Henslee, Griffith Evans, and Robert Ray, sheriff, said complaint having been filed on the 12th day of February, 1883, and having prayed for an injunction against the said defendants, requiring them, and each of them, to refrain from certain acts in said bill of complaint, and hereinafter more particularly mentioned. And notice of motion for an injunction having been served on the said defendants, and they having appeared by Markham, Patterson & Thomas, their solicitors, and filed an answer herein asking that the above-named Robert Rankin, L. C. Nelson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons be joined herein as defendants, and an affidavit of C. Edgar Smith having been filed in behalf of said motion, and affidavits of John B. Henslee, Joseph R. Crow, S. P. Brown, and Griffith Evans against said motion—

Now, after hearing argument on the 24th day of February from Messrs. Smith & Kellogg in favor of said motion and from Messrs. Patterson and Buck against the same, and having read the papers

filed herein, and it satisfactorily appearing that it is a proper case for an injunction, and that sufficient grounds exist therefor:

It is therefore ordered, that upon payment to the clerk of the United States Circuit Court in the city of Denver of the
78 amount agreed upon by the respective counsel, that is to say, the sum of thirty-two hundred and fifty dollars ($3,250) as security to abide the event of this action, then and therefore, and until further order in the premises, you, the said Robert Ray, sheriff, are ordered to refrain from making, executing, or delivering any deed to the property formerly of the Brittenstene Silver Mining Company, situated in Chalk creek mining district, in the county of Chaffee, state of Colorado, under or in pursuance of a certificate of sale issued to Joseph R. Crow on or about the 17th day of June, 1882, or in pursuance of another certain certificate issued by you to Griffith Evans on or about the 19th day of August, 1882.

And you, the said Robert Ray, sheriff, are likewise commanded to refrain from taking any action under the said certificate of sale, or under a certain bill of sale of alleged personal property given by you to said Griffith Evans on or about the 12th day of July, 1882.

And you, the said Griffith Evans, are commanded to refrain from meddling with or removing the alleged personal property in said bill of sale mentioned.

And you and each of you, said defendants, and all your
79 counsellors, attorneys, solicitors, agents, and servants, and all others acting in aid or assistance of you, are commanded to desist and refrain from any action against the property formerly of the Brittenstene Silver Mining Company by virtue of said certificate and bill of sale heretofore mentioned.

And afterwards and on, to wit, the 30th day of April, A. D. 1883, the depositions of John E. White, Lewis B. Eddy, Griffith Evans, John C. Fogg, George D. Merriam, George M. Robinson and C. Edgar Smith were opened, published, and filed in said court in said cause.

And the depositions of the said John E. White and Lewis B. Eddy are in words and figures as follows, to wit:

In the Circuit Court of the United States for the district of Colorado.

JOHN E. WHITE, agent, plaintiff,
agt.
JOSEPH R. CROW et al., defendants. } In equity.

80 STATE OF NEW YORK, SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, } *ss.*

I hereby certify that on the 10th day of April, 1883, before me, James E. Chandler, a notary public in and for the city and county of New York and state of New York, at my office, No. 74 Broadway, in the city of New York, county of New York, and state of New

York, personally appeared, pursuant to the stipulation hereto annexed, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon, John E. White, a witness named in one of the annexed stipulations, no one appearing as counsel for plaintiff or for defendants, and the said White, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition of said White was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witness, and the same has
81 been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I hereby further certify that on the 11th day of April, 1883, before me, James E. Chandler, a notary public in and for the city and county of New York and state of New York, at my office, No. 74 Broadway, in the city of New York, county of New York, and state of New York, personally appeared, pursuant to one of the stipulations hereto annexed, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon, Lewis B. Eddy, another witness named in one of said stipulations, no one appearing as counsel for plaintiff or for defendants, and the said Eddy, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the depositions hereto annexed.

And I further certify that the said deposition of said Eddy was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witness Eddy, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

82 And I further certify that the reason why the said depositions were taken was that the said witnesses reside at the city of New York, more than one hundred miles from the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further certify that my fee for taking said depositions is thirty dollars, ($30,) which I expect the said plaintiff, or his attorney, will pay to me, and the same is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal at the city of New York, in the county of New York and state of New York, this 11th day of April, 1883.

[SEAL.] (Signed) JAMES E. CHANDLER,
Notary Public, (No. 186,) *New York county.*

STATE OF NEW YORK,
City and county of New York, } *ss.*

I, Patrick Keenan, clerk of the city and county of New
83 York, and also clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby cer-

tify that James E. Chandler, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said state and for general purpose; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of Ap'l, 1883.

[SEAL.] (Signed) PATRICK KEENAN,
Clerk.

Deposition of John E. White.

United States Circuit Court, district of Colorado.

JOHN E. WHITE, agent, *against* JOSEPH R. CROW et al. } In equity.

It is hereby stipulated that the deposition of John E. White, complainant in this action, may be taken before James E. Chand-
84 ler, a notary public within and for the county and state of New York, at his office, No. 74 Broadway, city of New York, on the — day of ——, 1883, between the hours of 9 a. m. and 5 p. m. of that day, and if not completed on that day may be continued from day to day thereafter, at the same place, until completed.

And when so taken the said deposition may be used on the trial of said action, subject to the same objections (except as to form of interrogatories,) as if the said witness were there personally present and testifying therein.

(Signed) C. EDGAR SMITH,
Counsel for Compl't.
L. N. BUCK, MARKHAM, PATTERSON & THOMAS,
Sol'rs, &c., for Def'ts.

Interrogatories propounded by complainant's counsel.

1. First interrogatory:

Are you the complainant in this action, and did you purchase the property of the Brittonstene Silver Mining Company, and if so, when and how?

85 2. Second interrogatory:

If you answer that you did purchase said property, state if you knew that there were unpaid liens against said property, and what, if any, steps you took to pay said liens and release the property from them.

3. Third interrogatory:

Did you employ as your attorney one C. Edgar Smith, of Denver, Colorado, and what directions, if any, did you give him, and when?

4. Fourth interrogatory:

State what claims you have paid against the Brittenstene property and what efforts you have made, if any, to settle those now unpaid.

5. Fifth interrogatory:

Were you one of the directors of the Brittenstene company in January, 1882?

6. Sixth interrogatory:

Were you, or so far as you have any knowledge, were any of the directors informed by John B. Henslee that he had assigned
86 a claim against the Brittenstene company to one Joseph R. Crow, and that Crow had brought suit against said company, and that the summons had been served on him, (Henslee,) and that he (Henslee) had consented to judgment being entered against the Brittenstene company four days after the service of summons in the Crow suit?

7. Seventh interrogatory:

Did you during the year 1882, or previous to the 15th of Feb., 1883, receive any letters or telegrams from John B. Henslee relating to the purchase of any judgments or certificates of sale of the Brittenstene property; and if you answer yea, will you append such letters and telegrams and make them a part of this answer?

8. Eighth interrogatory:

Did you during the said year 1882, and on or about the 8th day of December of that year, receive a telegram from John B. Henslee; and if you answer yea, will you append such telegram and make it a part of this answer?

87 9. Ninth interrogatory:

Will you state any other matter or thing which may be material to the complainant's case, and fully and particularly as though specially interrogated thereto?

(Signed) C. EDGAR SMITH,
Counsel for Compl't,
McClelland block, Denver, Colo.

Cross interrogatories to be propounded to the witness and complainant, John E. White.

1. When and from whom did you purchase the property of the Brittenstene Mining Company?
2. What did you pay for the mines of the company, and when and to whom?
3. Did you pay in cash, or did you give your notes; and if so, to whom?
4. Did you purchase said property on your own account and for yourself, or for others; and if for others or for yourself and others, state who the others are?

88 5. Did you cause any examination of the records of Chaffee county, Colorado, to be made before purchasing, or did you purchase without such examination?

6. Were you at or before the time of such purchase a director of the Brittenstene Mining Company?

7. Before the said property was offered for sale, was it not understood and agreed that as such officer of the company you were to bid it in?

8. Was not the purpose and object of said sale by the receiver of said company to place the said property by sale beyond the reach of the creditors of said company?

9. Do you know anything about the Brittenstene company having confessed or authorized its treasurer to confess judgment at Pittsburgh, Penn'a, in favor of one Gallagher?

10. Was not that judgment so confessed in order that if you as the purchaser were barred by lapse of time or otherwise
89 from making redemption of the Brittenstene company's property from sales under judgments against it, then Gallagher might as execution creditor of said company make such redemption?

11. Was there any consideration for or as a basis for such judgment; and if yes, what was it?

12. Who was the secretary of your company in January, 1882, and following?

13. Who was its president during that time?

14. Did not Mr. Henslee, as agent or representative of the company in Colorado, repeatedly by letters to the president and the secretary of such company, inform them of the embarrassed condition of said company and of the necessity of providing funds with which to proceed with the development of its mines and for the settlement of its claims?

15. Did he not in a similar manner inform said company
90 of the transfer by him of his account to Crow, and of Crow's judgment for that amount against the company, and the manner in which the same was obtained?

16. Did not Mr. Morrison, the president of the company, give you and the board of directors full information of the existence and nature of the Crow judgment before and after your purchase of the said property?

17. If you say on your direct examination that you employed Mr. C. Edgar Smith to examine into the condition of title, and what, if any, liens were against it, will you annex to this deposition a copy (if you have it) of your letters to and correspondence with him on the subject, and especially on the subject of the Crow judgment?

18. If you answer the 8th direct interrogatory by appending a telegram from John B. Henslee, will you, if it was in answer to any letter or telegram of yours, append such letter or telegram, or if
91 you replied to it by letter or telegram, append a copy to your deposition?

19. State who, if any one, has charge or control of the correspondence of John B. Henslee to the Brittenstene Mining Company before a receiver was appointed therefor.

20. If you have charge thereof, append any and all such correspondence relating to the Crow judgment or other judgments against the said company to your deposition.

21. Did you not authorize your attorney to redeem from the sale under the Crow judgment, provided the holder thereof would consent to such judgment being redeemed after the statutory time given therefor had elapsed?

22. Were you not a director of the Brittenstene Mining Co. at the time you redeemed the property of the company from the Robinson & Evans sales?

23. Did you not cause an examination of the records of
92 Chaffee county to be made before the time of redemption for the sale under the Crow execution had expired?

24. Did you not know at least 5 months or some time before the expiration of the time for its redemption that the six months' time for the redemption of the sale under the Crow execution expired December 17th, 1882?

25. Were you not informed by C. Edgar Smith that the time for the redemption of the sale under the Crow execution expired Dec. 17th, 1882, some ten days or more before that date?

26. Did not Henslee, at your request and the request of the other directors of the company, repeatedly obtain from the judgment creditors of the company, including Crow, a stay of execution by promises to pay their several judgments?

27. Was not the suit by which the Brittenstene Mining Com-
93 pany was placed in the hands of a receiver a scheme devised by you and other parties, particularly those whom you represent, to obtain the property of the company and organize a new company to the exclusion of many of the stockholders of the old one?

28. Is it not your purpose and the purpose of those with whom you are associated, in the event of obtaining a good title to the property you have purchased from the receiver, to organize a new company and convey this property to them?

29. Were not you and the parties you represent all directors in the Brittenstene company at the time its property was purchased by you? Give the names of such of them who were.

30. Did you purchase this property from the receiver at public or private sale, and if at public sale, how many bids were against you?

31. Was not the receiver, at the time of his appointment, an officer in the company? Is he not interested with you in
94 the purchase of the property, or is he not to become so? Give his name in full.

(Signed) L. N. BUCK, *Att'y & Sol. for Def'ts.*
MARKHAM, PATTERSON & THOMAS,
Of Counsel.

In the Circuit Court of the United States for the district of Colorado.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW et al. } In equity.

STATE OF NEW YORK,
Southern district of New York, city and county of New York, } ss.

John E. White, a witness called on behalf of the plaintiff herein, and residing in the said city of New York, more than 100 miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

In answer to first interrogatory:

I am the complainant in this action; I did purchase the property of the Brittenstene Silver Mining Company at 111 Broadway,
95 New York city, December 1st, 1882, at public auction in real estate public sales building.

In answer to second interrogatory:

I know generally that there were liens unpaid upon the property, and understanding that the time was short for redemption, I telegraphed C. Edgar Smith to act for me.

In answer to third interrogatory:

Yes; I gave him directions to pay all valid claims December 6th, 1882.

In answer to the fourth interrogatory:

I have paid the following claims: Evans judgment, $1,055; Robison judgment, 487.90; Howe judgment, 572.13; Faulkener judgment, 140.67; taxes for 1882, 74.00; assessments, 826.50; Dean judgment, 50.00; and have been ready and anxious to pay all valid claims.

In answer to the fifth interrogatory:

96 I was.

In answer to the sixth interrogatory:

I was informed that Henslee said he had a claim. I was told he had sold or assigned the same to Crow. I had no knowledge of the manner in which judgment was obtained.

In answer to the seventh interrogatory:

Yes. I append herewith same, as requested, marked A, B, C, D, E, and F.

In answer to eighth interrogatory:

Yes. It is appended to my answer to the seventh interrogatory, marked A.

At that time Mr. Henslee was imposing on and deceiving me in that he had not paid $800.00 for assessments. He had only paid $200.00, and my attorney, C. Edgar Smith, subsequently paid $600 balance of assessments to the parties that did the work and took the affidavits of labor.

In answer to the ninth interrogatory:

The property was publicly advertised for sale in daily newspapers and by hand bills. There were fully two hundred people
97 in the public salesroom when bidding for property was going on, and it was a fair open sale to the highest bidder, and bought by bona fide purchaser.

In answer to first cross-interrogatory:

December, 1882, from J. Van Vechten Olcott, receiver.

In answer to the second cross-interrogatory:

Three thousand dollars to auctioneer; ten per cent. December 1st; balance on tender of deed—to J. Van Vechten Olcott, receiver.

In answer to the third cross-interrogatory:

In cash, as stated in my answer to the second cross-interrogatory.

In answer to the fourth cross-interrogatory:

No. Yes. Richard R. Raulison and James P. Burbank.

In answer to the fifth cross-interrogatory:

No. I purchased with intention of paying all valid claims.

In answer to the sixth cross-interrogatory:

98 I was.

In answer to the seventh cross-interrogatory:

No.

In answer to the eighth cross-interrogatory:

I had no knowledge of receiver's purpose. He was an utter stranger to me. I have understood from respectable people that he is a man of character and standing. So far as I know and believe all his acts were legal, orderly and proper, and have never been questioned.

In answer to the ninth cross-interrogatory:

I do not know that the Brittenstene company gave any authority to its treasurer to confess judgment at Pittsburg, or at any other place, in favor of Gallagher or any other person. I never understood that any officer of the company was given power to confess any judgment without a vote of the board of directors. I was informed by the treasurer that he had confessed such judgment.

In answer to the tenth cross-interrogatory:

99 No; I had no connection with it whatever; and when informed by the treasurer I gave it as my opinion to him that he had no right to do so without approval of the directors, and they had no such right, as company had deeded their rights, by order of court, to a receiver. I thought it irregular and illegal.

In answer to the eleventh cross-interrogatory:

I am informed the basis of such judgment was a claim of R. J. Morrison transferred to Gallagher; that if it rested against any one it was against the receiver and not against the property, inasmuch as I am advised that the title had passed from the company to the receiver, and deed was recorded Nov. 13th, 1882, some weeks prior to confession of judgment.

In answer to the twelfth cross-interrogatory:

Michael J. Drummond.

In answer to the thirteenth cross-interrogatory:

Richard J. Morrison.

In answer to the fourteenth cross-interrogatory:

100 I was told he did make representations to them as stated.

In answer to the fifteenth cross-interrogatory:

I was never informed that the Crow judgment was obtained in the manner as I am at present advised.

In answer to the sixteenth cross-interrogatory:

Mr. Morrison never gave me information of this crooked, fraudulent manner, nor the unlawful manner by which the company was unlawfully deprived of its rights.

In answer to the seventeenth cross-interrogatory:

I am informed my first telegram to Smith is appended to his cross-examination. As soon as I received a report from Mr. Smith, I instructed him to settle the Crow judgment. When Smith received my instructions he tried to settle the Crow judgment, although I did not believe it was a valid lien against the property on account of its being a fraud on the creditors. I am advised that a lien which is fraudulent against creditors is fraudulent against a bona fide purchaser.

101 In answer to eighteenth cross-interrogatory:

At the time of Henslee's and my communication I was not advised of my legal rights nor of the nature of things generally, and felt anxious. I append telegram marked AA.

In answer to the nineteenth cross-interrogatory:

I do not know.

In answer to the twentieth cross-interrogatory:

No answer is required.

In answer to the twenty-first cross-interrogatory:

The sale was just previous; I had but little time to act; I left it with my attorney. As soon as I received his report, I instructed him to pay the Crow judgment. I did so because I wanted a clear title and acted as diligently as I could. It was no fault of mine that my instructions to pay Crow judgment did not reach Mr. Smith until after Dec. 17.

In answer to the twenty-second cross-interrogatory:

I was a director at time of receiver's sale, but my function had expired with transfer to receiver, as I supposed.

102 In answer to the twenty-third cross-interrogatory:

I employed Mr. Smith to look after this matter and he reported to me that Robison sale was senior lien.

In answer to the twenty-fourth cross-interrogatory:

I did not understand that time for redemption of Crow judgment was December 17, until about that time.

In answer to the twenty-fifth cross-interrogatory:

No.

In answer to the twenty-sixth cross-interrogatory:

As to myself I do remember such request; as to the directors I cannot answer.

In answer to the twenty-seventh cross-interrogatory:

No.

In answer to the twenty-eighth cross-interrogatory:

If the question be pertinent or proper my answer is, I shall do what I consider best when time for action arrives.

103 In answer to the twenty-ninth cross-interrogatory:

As to myself I have already answered; my principals had no connection with company to my knowledge or belief.

In answer to the thirtieth cross-interrogatory:

At public sale; two bidders at first; they were strangers to me.

In answer to the thirty-first cross-interrogatory:

He was not a director; he was a stranger to me; he has no connection with or relation to me, except as stated in his official capacity; his full name is on record in Chaffee county, Colorado, in deed from company to him and from him to me.

(Signed) JOHN E. WHITE.

Subscribed and sworn to before me this 10th day of April, 1883.
[SEAL.] (Signed) JAMES E. CHANDLER,
Notary Public New York county.

104 A.

Dated LEADVILLE, COLO., *Dec.* 8, 1882.

To JOHN E. WHITE, 231 Pearl st., N. Y.:

If you pay eight hundred Saturday and give me one-third interest in the property, I will extend judgments ninety days.

(Signed) JOHN B. HENSLEE.

B.

OFFICE OF THE HOOSIER GIRL MINING AND MILLING CO.,
LEADVILLE, COLORADO, *Dec.* 2, 1882.

Mr. JOHN E. WHITE, New York.

DEAR SIR: Your dispatch rec'd. As the company's right of redemption expires on 9 inst., it (the company) will have no right to do the assessment work for 1882 ($800) after that.

Present owners of judgments & certificates have p'd for assessments on Quincy & Virginia, and have to pay for balance on 9th.

105 If you pay the $800 assessments by next Saturday, you can have a fair show with them. The company p'd the assessment on the tunnel site, but it was found legally necessary to do $100 worth of work on each of the other 8 claims.

Yours truly, (Signed) JOHN B. HENSLEE.

C.

LEADVILLE, COLO., *Dec.* 11, '82.

Mr. JOHN E. WHITE, New York.

DEAR SIR: Mr. Smith has simply deposited $1,050 to redeem first certificates, and gives me no satisfaction as to what he intends doing about the others. If you intend simply to redeem each as it matures, the parties will advertise and sell under other judgments at once, although there is no disposition to put you to this expense.

I had assessments on Quincy and Virginia done and paid for them, but I mislaid the certificates. Mr. Smith knows I did, because he saw duplicates posted at mines, and yet he declines to pay me unless

106 I can produce the affidavits of the men who did the work, *i. e.*, the originals. I have paid out thousands of dollars for you and accounted properly for it, and I don't relish being treated like a thief by your lawyer.

I would have joined you in a pool on any fair basis, or I would have taken up all papers for you without charge, if you had not employed a half-dozen lawyers to watch me.

I have kept watch of the property for a year; a great loss of time

and expense, and without pay; have done assessments in name of company, and advanced money to pay for it when necessary. Now, then, do you think it right to keep me out of money paid out until very last moment, and have me lose all stock and everything else? I believe you are too just. At any rate I shall wait and see, and if this is the game, I will protect myself. I have no acquaintance with Smith, but I think he is on the beat.

I have a plan on foot by which I know I can get money to develop the property and make it valuable. If you choose to do a liberal part by me, I will work with you. I think all the
107 stockholders ought to have some show. It will pay to give it to them. Your enclosed telegram was not rec'd until night. It offered nothing whatever to me, or I should have accepted it. Please be kind enough to write me fully just what you intend to do about paying off all the debts and letting me have a show.

Yours truly, (Signed) JNO. B. HENSLEE.

D.

DENVER, COLO., *Jan.* 2, 1883.

Mr. JNO. E. WHITE, New York.

D'R SIR: I have had a long and pleasant talk with Mr. Smith. He thinks you have the title; the other lawyers think the other parties have it. Either party, however, is liable to be *scooped* by Morrison.

As the agent of the parties who *think* they have the *legal* title, subject only to Morrison, I declined to receive any money from Mr. Smith until I could correspond with you. I am sure that neither you or they wish any advantage of each other, and I think
108 you had better "pool issues."

Write me your views and propositions, if you think favorably. Any litigation will be long, tedious, and expensive, and property is not worth much fighting over in its undeveloped state. I return to Leadville to-morrow.

Yours truly, (Signed) JNO. B. HENSLEE.

E.

OFFICE OF THE HOOSIER GIRL MINING AND MILLING CO.,
LEADVILLE, COLORADO, *July* 12, 1882.

JNO. E. WHITE, esqr., New York.

DEAR SIR: The Brittenstene mines and machinery have been sold under three judgments, and are now advertised under the fourth, amounting in the aggregate, including costs and expenses, $5,000. Two good parties and I have agreed to (have already paid $1,600) take up these judgments, and if you wish to join us for ⅓ of
109 the $5,000 cash, you can do so by wiring me the money, as directed in to-day's letter, immediately. I will then buy the

machinery back from purchaser and hold it, so no one can touch or move it from mines. This will cut off all later judgment-creditors, and in case company fails to redeem in 6 months and judgment-creditors in 9 months, we will own the whole property absolutely and free from any incumbrance. If company or creditors redeem, we get our money back with 10 per ct. per annum interest. So we are absolutely safe in any event.

If there is no redemption, my plan is then to organize a new co., same capital as old, and allow old stockholders to subscribe for new stock for 30 days at 25 cents per share, ½ proceeds to go to us to purchase the mines, and the other ½ into the treasury for development. Say 100,000 of old stock availed itself of this, it would give us $12,500 cash and $12,500 in treasury for development, and leave 100,0 0 shares still in treasury. We would then take 50,000 shares of this for ourselves, without charge, and sell other 50,000 shares at 50 cents or more, for development. This would give us a chance to protect our immediate friends and old stockholders. We don't get any deeds until time expires. Sheriff give us certificates of
110 purchase and deed when time expires. Wire if you want to join. Use your own pleasure. Strictly confidential in any event. No one else in N. Y. knows it.

(Signed) JNO. B. HENSLEE.

F.

LEADVILLE, COLORADO, *July* 24, 1882.

JOHN E. WHITE, esq., New York.

DEAR SIR: Yours of the 18 inst. is at hand. I don't believe the receiver can deprive the stockholders of their right to redeem in 6 months. But even if they can, he will have to buy the right himself, and the right would expire in his hands by Jan. 1, '83, unless he paid off all judgments under which property has been sold. And I am sure he could not pay those; hence I am sure that parties that own western judgments will own the property.

I feel exceeding friendly towards you and Eddy. But do
111 just as you please about joining the western men. I don't think there will be any chance after this week.

(Signed) JNO. B. HENSLEE.

AA.

Dated NEW YORK, 7 *Dec.*, 1882.

To JOHN B. HENSLEE.

If accepted instantly will wire eight hundred Saturday, if payment judgments extended ten days.

(Signed) JOHN E. WHITE.

U. S. Circuit Court, district of Colorado.

JOHN E. WHITE, agent, *against* JOSEPH R. CROW et al. } In equity.

Deposition of L. B. Eddy.

It is hereby stipulated that the deposition of L. B. Eddy, a witness on behalf of the complainant in the above entitled action, may be taken before James E. Chandler, a notary public within and for the county and state of New York, at his office, No. 74 Broadway, city of New York, on the — day of ———, 1883, between
112 the hours of 9 a. m. and 5 p. m. of that day, and if not completed on that day may be continued from day to day thereafter, at the same place, until completed. And when so taken the said deposition may be used on the trial of said action, subject to the same objections (except as to the form of interrogatories) as if the said witness were then personally present and testifying therein.

(Signed) C. EDGAR SMITH, *Counsel for Compl't.*
(Signed) L. M. BUCK, *for Def'ts.*
MARKHAM, PATTERSON & THOMAS,
Of Counsel for Def'ts.

1. First interrogatory:

Please state your name, residence, and business.

2. Second interrogatory:

Are you acquainted with one John B. Henslee, of Leadville, Colorado?

3. Third interrogatory:

Have you had any correspondence with said Henslee since
113 July, 1882, and prior to February 20th, 1883, relating to the Brittenstene property or the complainants' redemption of the same? If you answer yea, will you produce any and all letters or telegrams received from said Henslee during the period mentioned touching these matters, and append the same hereto as a part of your answer?

4. Fourth interrogatory:

Do you know any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) C. EDGAR SMITH,
Counsel for Compl't, McClelland Block, Denver, Col.

Cross-interrogatories to be propounded to the witness Eddy, for and on behalf of the defendants.

1. Did not John B. Henslee, at your request, or at the re-
114 quest of John E. White, or of both of you, obtain several stays of execution on the Crow judgment and other judgments against the Brittenstene company upon your promise or the promise of both of you, or of the company, to pay the same?

2. Did not J. B. Henslee, at the request of yourself or of John E. White, or of both, obtain the consent of the Colorado creditors of the Brittenstene company, including said Crow, to place their judgments in escrow, and give the company further time, in consideration of a partial payment to be made to them, and did you and White and the company fail to pay the amount promised, by reason whereof the arrangement failed?

3. If you have copies of your letters or telegrams to Henslee in relation to said matters or any of them, append them to and make them a part of your deposition.

4. What interest have you in the subject-matter of this litigation?

115 5. Are you not one of the principals of whom John E. White is the agent in making purchase of the property in controversy in this cause?

6. Did you not furnish, or are you not to furnish, a part of the consideration paid or to be paid by White on said purchase?

7. Were you not one of the directors of the Brittenstene company during the year 1882, and until and after the appointment of a receiver therefor?

8. Were not you and other directors of that company notified by John B. Henslee of the several judgments against and sales of the property of the Brittenstene Mining Company, including that of Crow, as they were obtained and as the sales were made?

9. Did not Henslee, at the time of the obtaining of the same, or very shortly thereafter, inform you or the board of directors, or the
116 president or secretary of the Brittenstene company, or some one or more of them, of the nature and consideration of the Crow judgment?

10. In complying with the interrogatories of the complainant, have you placed and annexed to your deposition *all* of the letters and telegrams of Henslee to you concerning the subject-matter of this suit, as well as those letters and telegrams from him which are under your control? If not, do so.

11. Were you not a director of the company at the time of White's purchase of the property at the receiver's sale, and were you not also such director at the time of the redemption of the property under other execution sales by said White?

12. What schemes or plans were devised by yourself, White, and others, directors of the company, or any of them, to be proposed by J. B. Henslee to the Colorado creditors, including Crow, for the settlement of their claims or judgments?

13. Did not Henslee, as state agent of the company, endeavor to comply with all your requests in securing extensions of
117 time on judgments against the company, and did he not discharge his duty in trying to prevent sales of the property as long as possible?

14. Do you know anything of the judgment of one Gallagher against the company, obtained by confession in Pittsburgh, in the state of Penn'a? Give the particulars thereof fully, and state why it was obtained outside of the state of N. Y. Give the date of it, and state also why the receiver of the company was not a party thereto. State also what the consideration of it was.

(Signed) L. N. BUCK, *Sol. for Def'ts.*
MARKHAM, PATTERSON & THOMAS,
Of Counsel for Def'ts.

In the Circuit Court of the United States for the district of Colorado.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW et al. } In equity.

STATE OF NEW YORK, SOUTHERN DISTRICT OF NEW YORK,
City and county of New York, } *ss.*

118 LEWIS B. EDDY, a witness called on behalf of the plaintiff herein, and residing at the said city of New York, more than one hundred miles from the place where the cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

In answer to the first interrogatory:

Lewis B. Eddy; residence, New York city; place of business, 68 Wall street; a broker.

In answer to second interrogatory:

Yes.

In answer to the third interrogatory:

Yes.

In answer to the fourth interrogatory:

I was present at the sale of the Brittenstene property at the public real estate rooms, 111 Broadway, N. Y.; it was sold at public auction to the highest bidder; there were several bidders, and finally it was knocked down to John E. White, agent; I am knowing to the facts that due legal notices of sale were published and hand-
119 bills distributed, both of which I saw repeatedly, at the hour of sale, in accord with notices of same; there were between one and two hnndred men on the auction-floor; I heard Mr. White ask the auctioneer if there were any other liens against the property and would he guarantee purchaser against same; his reply was that

he did not know anything about any liens or claims or judgments against the property except this one under which he would sell the property, and that he would guarantee nothing; I also know that the directors of the company were notified by the receiver of the sale; that the directors, under order of the court, deeded all rights, property, rights of redemption to the receiver, being present at each meeting called by order of court.

In answer to the first cross-interrogatory:

Mr. Henslee so wrote to some one that he had induced the creditors to stay proceedings; am not clear as to promise of White or company, and as to myself I had not the means to pay with.

In answer to the second cross-interrogatory:

120 Don't remember; I refer you to the letters attached marked A, B, C, D, E, F, G, H, I, J, K, L, M, and N.

In answer to the third cross-interrogatory:

I have attached all letters and telegrams referring to the subject.

In answer to the fourth cross-interrogatory:

None whatever.

In answer to the fifth cross-interrogatory:

No.

In answer to the sixth cross-interrogatory:

No.

In answer to the seventh cross-interrogatory:

Yes.

In answer to the eighth cross-interrogatory:

I refer you to letters given; if my memory is correct Mr. Henslee did notify the secretary of the company of judgments and sales;

121 but cannot say positively from whom the information came, though I think he also wrote me the facts.

In answer to the ninth cross-interrogatory:

Mr. Henslee notified the secretary of the company that he had advanced to the company some fifteen or seventeen hundred dollars, showing same upon pay-rolls, and in letters to me has referred several times to the company owing him this amount; was informed by letter from Mr. Henslee or by some director of company that Henslee had assigned his claim to Crow.

In answer to the tenth cross-interrogatory:

Yes; all that I can find; I have been careful to preserve Mr. Henslee's letters and telegrams, and I believe I have attached all referring to this subject-matter.

In answer to the eleventh cross-interrogatory:

Yes; but suppose that my functions ceased when company deeded all its property and rights to the receiver under order of the court.

In answer to the twelfth cross-interrogatory:

122 A plan was proposed, entered into and attempted by directors, by and through which all holders of stock were to surrender one-half of their holdings to the treasury of the company, to be sold for benefit of treasury; first, to pay off all valid claims against property; second, to provide a working capital.

In answer to the thirteenth cross-interrogatory:

Mr. Henslee so informed me by letter. I refer you to same.

In answer to fourteenth cross-interrogatory:

Yes; I was informed that the secretary of the company was in Pittsburgh, Penn., and confessed judgment to one Gallagher on a claim said to have been assigned to him by R. J. Morrison. I understood the secretary was in Pittsburgh on his private business. I have no means of knowing why the receiver was not a party thereto, nor do I know the consideration. Don't remember the date. In fact, never knew the date.

(Signed) LEWIS B. EDDY.

Subscribed and sworn to before me this 11th day of April, 1883.

[SEAL.] (Signed) JAMES E. CHANDLER,
Notary Public, New York county.

123 A.

LEADVILLE, COLO., *Dec.* 14, 1881.

FRIEND EDDY: I wired Drummond last night to know if he would give me option 10 days on 50,000 shares at 50c. and 6 mos. on 50,000 more at $1, 5 per cent. cash bonus to be paid on the latter. I don't know that I can do anything, but I want to try a strong party, as everything seems to have failed in N. Y.

They have treated me badly on the money advanced for the co, &c. I paid off debts to stop suits and attachments in Oct. to help their deal along, and have carried it, when I have lately paid 5 per cent. and 10 per cent. per month when banks shut down on loans.

I can stand it no longer, and they must accede to my terms now or pay up, or else I shall advise every creditor to sue, and I shall join them and sell the thing out. I want to protect you as best I can, but I must protect myself against D. & M.

Your friend,

(Signed) JNO. B. HENSLEE.

124 B.

LEADVILLE, COLO., *Feb'y* 6, 1882.

FRIEND EDDY: Your two letters—one of Jan'y 30 and the other of Feb'y 1—both received this morning.

You are all laboring under a misapprehension as to what I have done. You seem to think the assignment of account to Crow fictitious; that I merely assigned it to him that judgment might be obtained in his name, while I remained the real owner. This is what all of you think, as your letter clearly indicates, and I consider it a very unfair imputation against one who has done so much for the company as I have.

The facts in the case are these: My debt against the company has been held as collateral ever since it was created. The 1st Nat. Bank of this city *now* owns $1,250 of it, and Mr. Crow owns the balance. I do not own one cent of it, and have no control over it. These are old debts, and it is the 1st National especially that is pressing They say they must and will have the money, no matter what the
125 consequences are. But if $500 is paid now, I think I can get them to wait 30 days. Crow put in a large amount of money and has had nothing out, and will take nothing but cash for what is coming to him; still, he will wait 30 days for his to accommodate you.

I am still *largely* indebted to the First National and to Mr. Crow, and am *bursted*, and will lose all my stock in any event. Much of this indebtedness was created by me to buy Brittenstene stock from $1.50 to $3 per share to keep up the market. And the suspicions and uncomplimentary opinions that the N. Y. directors now entertain of me is the requital I get for my labors and my sacrifices.

I know of any number of companies stocked for $2,000,000 whose property is not one-tenth as good as Brittenstene, and whose stock sells readily from 50 to $2 per share, simply on account of men connected with us, and thus development proceeds regularly. Falco Co. at Alpine, for example. But as our men have neither money nor influence, they have to raise money the best way they can. I know Evans can't afford to carry his debts at 6 per ct. or 10
126 per ct. in this country, for his capital is small, and money here commands from 2 to 10 per ct. per month.

I know, too, that most of the stockholders will object to a mortgage, but I suppose the directors can do as they please.

All actions on judgments will now be suspended until you have time to answer this by telegraph. I can't get anything more than this promised now, and if you don't want the property advertised, please telegraph something definite immediately upon receipt of this.

I can get surveyor to wait thirty days or so if a definite promise is made.

Yours truly, (Signed) JNO. B. HENSLEE.

C.

LEADVILLE, COLO., *Feb'y* 8, 1882.

L. B. EDDY, esq., New York.

DEAR SIR: The surveyor has obtained judgment for amount of his bill, but has promised to await your telegraphic reply next week before advertising and selling at sheriff's sale. He will wait longer if he can get definite promise or assurance.

127 Yours, (Signed) JNO. B. HENSLEE.

D.

LEADVILLE, COLO., *Feb'y* 13, 1882.

L. B. EDDY, esq.,
Vice Pres't Brittenstene Silver Mining Co., New York.

DEAR SIR: Mr. Hamilton advises me this morning that Evans & Co. have begun an attachment suit against the company for something over $1,900, and Campbell & Co. another one for something over $100. I suppose Mr. Hamilton has notified Mr. Drummond.

A judgment will not be valid unless they get service on me as state agent. Possibly they think service on Hamilton sufficient. An attachment suit makes it very expensive for the company, however, and the company ought to do something at once, or say they can't, and let the property sell.

Respectfully, (Signed) JNO. B. HENSLEE.

E.

LEADVILLE, COLO., *May* 31, '82.

128 FRIEND EDDY: Yours 22 & 23 rec'd. I shall be very glad if you can raise the money and pay claims, and thus prevent sale.

I understand Evans has it advertised for sale on June 10th, and other ad. is for June 17th.

I see no use of giving option on stock. But you can go ahead, and if you can make a sale I think I can furnish you all you want at any time at 25c. or less, whether it sells or not. With right of redemption, stock will sell for about as much after as before sale.

In haste, yours, &c.,

(Signed) JNO. B. HENLEE.

F.

LEADVILLE, COLO., *July* 7, 1882.

FRIEND EDDY: Yours 3 inst. rec'd. I certainly had no intention or thought of injuring your scheme when I wrote White, and I don't see now how it can have any such effect.

I don't want to discourage you, but I am confident you will fail

anyway, for these reasons: the parties with whom you are
129 negotiating read the N. Y. papers and are bound to see the quotations and what the papers have lately said about the company, and if they come out here to see the mines, the winze is full of water, so no examination can be made, and the parties at mines will tell them about sheriff's sale.

Yours truly, (Signed) JNO. B. HENSLEE.

G.

LEADVILLE, COLO., *July* 21, '82.

FRIEND EDDY: Why is it that you & White have ceased writing entirely? Is it because you have abandoned all efforts and given up all hopes of doing anything?

Yours truly, (Signed) JNO. B. HENSLEE.

H.

LEADVILLE, COLO., *July* 24, 1882.

FRIEND EDDY: Yours of the 17 inst. rec'd. You can have 50,000 shares of the Western stock at 20c. per share. I am not offering, and shall not offer, any of the stock at any price. And if your
129½ parties make any inquiries about the stock, they will be talked to in strict accordance with your instructions. Have no fears on that score; I fully understand your plans and will do all in my power to help you. In my judgment, however, there is one way and only one for you, White, myself and our immediate friends to fully protect ourselves, and that is for you to co-operate with the Western parties in buying in the property under the $5,000 judgment. It will require about $1,700 cash from the east, and I don't think the opportunity will be open longer than this week. The money is not needed, as parties here are begging to get in.

I don't believe the co. will ever redeem, nor do I believe that any later judgment creditor will redeem, nor do I believe that Mr. Tracey or the receiver will redeem. Hence, the parties who bo't sheriff's certificates of sale from the owners will own the whole property after Jan'ry.

Yours truly, (Signed) JNO. B. HENSLEE.

130 I.

LEADVILLE, COLO., *July* 25, '82.

FRIEND EDDY: In reference to the machinery I think your *legal* view is entirely erroneous. No transfer or bill of sale is necessary to convey title to personal property; simple delivery is sufficient, and removal of property to and setting up of same at the mines, with several months' continuous and undisputed possession, coupled with the fact that there was no chattel mortgage recorded in Chaffee co. against the property, is *prima facie* evidence of ownership in the

company. Of course I know that the co. did not *really* own the property. But I am speaking now of the *legal* aspect of the case, and I am sure he can hold the property in spite of anybody or anything, no matter what *verbal* understandings or agreements can be proved.

After the property was set up at the mines there was just one way to guard against this, and that was to execute a chattel mortgage and record it in Chaffee co., and this was not done. You
131 had just as well recognize this and act accordingly. Evans has sold it, and it will soon be removed from the mines unless Mr. White joins in the plan I propose. In this case I propose to buy it from purchaser and keep it; then several hundred dollars will be saved by this. There is not a day to lose.

Yours truly, (Signed) JNO. B. HENSLEE.

J.

LEADVILLE, COL., *July* 26, '82.

FRIEND EDDY: Please inform me confidentially who holds the $20,000 loan that Dennis Ryan was carrying for White & Drummond on 40,000 sh's of stock. Is the stock still held by some one as collateral; if so, who holds? I simply want to know, and will not use it to anybody's injury.

Yours, &c., (Signed) JNO. B. HENSLEE.

K.

LEADVILLE, COL., *Aug.* 1, '82.

132 FRIEND EDDY: Yours of is rec'd . I will do all in my power to further your scheme. Should it fail, however, urge Mr. White to join in the plan I have suggested to him. It will pay a profit to party joining and furnish protection to our friends who invested through us by placing good development fund in the treasury.

Yours, &c., (Signed) JNO. B. HENSLEE.

L.

LEADVILLE, COLO., *Aug.* 5, '82.

FRIEND EDDY: Another party joined the pool to-day and paid his money for $\frac{1}{8}$ interest. Mr. White cannot get $\frac{1}{8}$ now. He can get $\frac{1}{4}$ for $1,500 (total am't of all judgments & costs aggregate nearly $6,000 now) if taken very soon. But others stand ready to take it all. Nobody can compel these men to part with it after they buy.

(Signed) JNO. B. HENSLEE.

133 M.

LEADVILLE, COL., *Aug.* 11, 1882.

FRIEND EDDY: Yours of 7 inst. rec'd.

Will do all I can to help, if I can see or reach your parties.

If you will present the facts in the machinery case to your att'y just as I presented them in my letter to you, I think he (the att'y) will decide with me.

I am afraid that White will be too late in putting in his part to buy the property, for the parties buying in now will not sell except to me, and I may not be able to control it longer than next week.

134 Please tell me *confidentially* the am't of loan to Ryan, and am't of collateral. Who all are on the note, and what do you think Ryan will do?

Please answer each of these questions. I shall not write to him, and promise you that it shall in no manner injure you or White.

Yours truly, (Signed) JNO. B. HENSLEE.

N.

LEADVILLE, COLO., *March* 7, 1883.

FRIEND EDDY: Your letter of 21 ult. came during my absence in Boulder. Since then, as you of course know, Mr. Smith obtained a temporary injunction against sheriff making a deed to owners of Crow certificate until all the facts in the case can be heard in May. Then whichever side is beaten will appeal to U. S. S. Court.

The Western men have employed as good counsel as there is in Colorado, (Markham, Thomas and Patterson of Denver, and Buck of Leadville.) These men say Crow judgment was not technically one of confession, but a judgment by consent; that even if it were

135 illegal it would have been necessary to attack it *directly* before the sale; that it cannot be attacked collaterally; that the false recital, in face of sheriff's certificate that it was sold subject to Robison execution, cannot affect it, as the records show to the contrary; that even if the recital had been true it could have no effect, as redemption of certificate under senior lien confers no right of redemption under a junior lien after the time has expired.

Mr. Smith denies some or all of these propositions. Now, when good lawyers differ, how are business men to decide who is right? With such intricate legal questions at issue, it was to be expected that the court would grant a preliminary injunction, that no one might be wronged.

Mr. Smith and I had several talks, and agreed that a compromise would be better, but having no personal interest we were neither authorized to make any proposition. Just before the case came up I wrote Mr. Smith that I should still stand ready to recommend this course to the Western men, even if the court refused to grant the injunction.

136 I still hold to the same opinion, and if you and Mr. White desire and request it, I will mediate between you and the other parties, and communicate with you or Mr. Smith. Neither such mediation or this letter is to be used to the prejudice of either party. Both sides had better make some concessions; otherwise the property will be in litigation for 3 years, and each side will spend $10,000, or more, fighting it.

Morrison and Brittenstine will each begin a suit too, unless some settlement is made.

Yours truly, (Signed) JNO. B. HENSLEE.

(Endorsed:) 1126; United States Circuit Court for dist. of Colorado; John E. White, agent, *vs.* Joseph R. Crow et al.; deposition of John E. White and Lewis B. Eddy; opened, published, and filed Apr. 30, 1883; (signed) Edward F. Bishop, clerk.

And the depositions as aforesaid of the said GRIFFITH EVANS, JOHN C. FOGG, and GEORGE D. MERRIAM are in words and figures as follows, to wit:

137 U. S. Circuit Court, district of Colorado.

JOHN E. WHITE, agent, *agt.* JOSEPH R. CROW et al. } In equity.

Notice of examination of witnesses to be taken orally before R. H. Buck, examiner.

Please take notice that on Thursday, the 22nd day of March, inst., at the office of Ross & Coston, attorneys, Opera block, Buena Vista, Chaffee co., Col., the complainant herein will proceed to take the testimony of witnesses in his behalf at 10 o'clock a. m. of that day.

(Signed) C. EDGAR SMITH,
Counsel for Complainants.

To MARKHAM, PATTERSON & THOMAS,
Solicitors for Defendants.

(Endorsed:) U. S. Circuit Court, dist. of Col.; in equity; John E. White, agent, *against* Jos. R. Crow et al.; notice of examination; service of within notice admitted this 15 Mar., 1883; (signed) Markham, Patterson & Thomas, solicitors for def'ts.

138 United States Circuit Court, district of Colorado.

JOHN E. WHITE, agent, *vs.* JOSEPH R. CROW et al. } Equity.

The depositions of Griffith Evans, John C. Fogg, and George D. Merriam, all witnesses of lawful age, produced, duly cautioned, sworn

and examined upon their several oaths on the twenty-second day of March, A. D. 1883, beginning at the hour of ten o'clock in the forenoon, at the office of Ross and Caston, in Buena Vista, county of Chaffee, state of Colorado, by and before me, Robert H. Buck, an examiner for said court duly appointed and qualified, pursuant to the notice hereunto attached.

On this twenty-second day of March, A. D. 1883, beginning at the hour of ten o'clock in the forenoon, the said witness, GRIFFITH EVANS, having been by me first duly cautioned and sworn on oath, testified as follows on the part of the complainants in said cause:

My name is Griffith Evans; residence, St. Elmo, Colorado; occupation, merchant.

139 Int. 1. Do you know one of the defendants in this action, Mr. John B. Henslee?

A. I do.

Int. 2. How long have you known him?

A. Since the summer of 1881.

Int. 3. Do you know the Brittenstene Mining Company and its property?

A. Yes; I know of such a company, and have been on its property in Grizzly gulch, about 3 miles from St. Elmo.

Int. 4. Did you get judgment against the Brittenstene company?

A. I did. The amount of the judgment was $2,000. It was obtained in April, 1882, I think.

Int. 5. State what sales were made under that judgment, and when as near as you can.

140 A. I can't give the dates exactly. But the first sale was after the expiration of the legal time for advertising.

(Question and answer objected to as secondary.)

Int. 9. How many certificates or sales of real property did you receive from the sheriff?

A. Two.

Int. 7. Have you sold these certificates, and if so, to whom?

A. I have sold them to John B. Henslee.

Int. 8. How much did he pay you for them?

A. I think I realized on the first one $915.00 and on the second one some $175.00. It was not over 175; but I don't recollect the exact amount.

And thereupon, on cross-examination, the said witness, GRIFFITH EVANS, further testified as follows:

141 Cross-interrogatory 1. When you sold the certificate of sale, did you make a transfer or assignment on the back of it?

A. I endorsed it in blank.

x 2. There was then no names in the assignment at the time you signed it?

A. No, sir; I was instructed by Mr. Henslee to sign it in blank.

x 3. Was not the name of Noel & Wilson in one of them when signed?

A. The second one was signed for me by my attorney, Mr. Watson, and I think he put in the name of John B. Henslee, and Mr. Henslee returned it to Mr. Watson to have his, Henslee's, name erased. There was no name in the one that I signed. Mr. Henslee was very particular to have the names left blank.

x 4. Do you know whether any other names were substituted when the name of Mr. Henslee was erased?

142 A. No, sir; I do not.

x 5. Do you know whether Mr. Henslee was acting for himself or other parties in the purchase of these certificates?

A. I have no means of knowing.

x 6. Did you at a sheriff's sale purchase the personal property belonging to the Brittinstine company?

A. I did.

x 7. Did you after that purchase take possession of that property in any way?

A. No more than that the keys were left at my store, and I gave up the keys to some of the employees to go to work. I did not remove anything.

x 8. What was your object in not removing the property after you bought it?

A. I looked at it as a considerable cost to remove the property, and I was looking for the company to redeem, which would

143 save them and myself cost; that was the reason I didn't remove anything.

x 9. What keys were those that were given to you?

A. Keys of the boarding house and engine house.

x 10. Was the personal property you bought in those houses?

A. Yes, sir; they were.

x 11. Who gave you those keys?

A. They were first given to the sheriff when he made the attachment; then by him to the keeper, and by the keeper to me after the sale.

x 12. By keeper, do you mean the man placed there by the sheriff?

A. I do.

x 13. Was the attachment you speak of issued on the suit that you brought?

144 A. It was.

x 14. Have you had, since you bought that personal property, any offers to purchase it from you, and if so, from whom?

A. Mr. C. Edgar Smith came to St. Elmo some time in December, and said he came to close up the Brittenstene matters. He told me he was sorry I had no legal title to this personal property, but that the company felt friendly towards me, and would give me $500 for the property. I declined the offer.

(Signed) GRIFFITH EVANS.

And thereupon the said witness, JOHN C. FOGG, having been by me first duly cautioned and sworn, on oath testified as follows, on the part of complainant in said cause:

My name is John C. Fogg; residence, Denver, Colorado; occupation, mining.

Int. 1. Are you in charge of the Brittenstene property now, and in the employ of the complainants?

145 A. I am.

Int. 2. State if there is any machinery on the property, what it is, how it is situated, and in what manner attached to the land.

A. There is machinery there; an engine, boiler, pump, and air compressor. The engine is on a foundation of heavy timber bolted down. The boiler is an upright boiler some 12 feet high, standing on a foundation and connected with the engine by necessary pipes. The pump is connected with the boiler and the receiver is connected with the compressor or engine. A large exhaust pipe from the boiler goes through the roof, and the 3-inch pipes are connected with the compressor and receiver and pass out of the building to the works inside. The machinery is enclosed in a log building about 12 ft. high under the eaves, and is about 20 x 22 ft. on the ground. There is also in the building a blacksmith's forge, anvil and workbench, with vise attached, and other necessary things for repairing a boiler of that kind. There is quite a lot of rubber hose

146 there, used for connecting pipes. I think that is all the machinery.

Int. 3. State how and for what purpose this machinery is used.

A. The company surveyed a tunnel, called the York tunnel, to cross-cut their lodes and cut them to some depth. The tunnel has to run 1200 to 1500 feet to strike the Quincy lode, and they erected this machinery at the mouth of this tunnel to do this work.

Int. 4. State, if you know, about how many lodes there are.

A. I think about 12 different veins.

Int. 5. State, if you know, whether the different locations have distinct boundaries.

A. I think 8 of them are independent properties. The others are included in the side lines of these eight.

And thereupon, on cross-examination, the said witness, JOHN C. FOGG, further testified as follows:

147 Cross-int. 1. What is the power of the engine and boiler?

A. I couldn't tell. I should judge about 40 or 50 horse power.

x 2. When did you first see this machinery?

A. The latter part of January, 1883.

x 3. You know nothing of it or how it was located prior to that time?

A. I do not, of my own knowledge.

x 4. Are the timbers that the engine is bolted to just laid on top of the ground?

A. They are hewed timbers, thoroughly bolted together, but I don't know whether they are set in an excavation of the ground or not, but think they are. An engine of that size couldn't be properly put on the ground without excavating for the foundation.

148 x 5. Is there any stone foundation under the timbers on which the engine is placed?

A. I think there is a natural rock foundation. I think they excavated and put the timbers on the solid bed-rock. The hill slopes there.

x 6. Is any of the machinery fastened to the walls of the house which encloses it?

A. As much as any machinery of this character is fastened. Pipes run through the building.

x 7. Have you ever seen a map of this property?

A. I have seen several maps of it, and have help make the last surveys made of the property.

x 8. Is there any of the 12 claims which is not intersected and crossed to a greater or less extent by some other of the 12 claims?

A. I couldn't answer that; three are cut by the side lines overlapping.

149 x 9. Is not this property only valuable as a whole property?

A. I think it is valuable as separate properties.

x 10. Does not the tunnel site extend entirely across the whole property?

A. I think it would extend across the side lines of the whole property at the surface, but with the dip the Quincy has I don't know where it would go to. On reflection, it would take in the whole of the Quincy.

x 11. Is not the only practicable way to work that property through this tunnel?

A. No; I think that is a very impracticable way to work it. It ought to be worked by shafts. The tunnel cuts no lodes to any great depth, except the Quincy.

x 12. Inasmuch as each of these 12 claims is overlapped by and in conflict with some of the others, were each of the claims

150 owned by different parties, would they, in your opinion, have any practical value?

A. Oh, yes; the side lines overlapping don't affect your lode in my opinion.

x 13. What is the slope of the mountain at the place where these lodes are situated?

A. It has different slopes, some very slight, some very steep. Couldn't say how it slopes. From where the York tunnel goes in a perpendicular line to the Virginia shaft location would be about 600 or 700 ft. The greater part of that rise is on the last 300 feet.

x 14. Was not the tunnel you speak of run with the design of

working the claims through the tunnel and taking out what ore might be found through it?

A. I suppose that was the intention or object of the tunnel.

And thereupon, on re-direct examination, the said witness, JOHN C. FOGG, further testified as follows:

151 Re-direct 1. Do you regard the tunnel as of any value to the property?

A. Of no value at all.

(Signed) JOHN C. FOGG.

And thereupon the said witness, GEORGE D. MERRIAM, having been by me first duly cautioned and sworn on oath, testified as follows on the part of the complainants in said cause:

My name is George D. Merriam; residence, Buena Vista; occupation, deputy sheriff of Chaffee county; have been deputy sheriff since 2d Tuesday of January, 1882.

Interrogatory 1. Did you supervise all the different sales of the Brittinstene property?

Answer. I did; all except the sale of personal property.

Int. 2. Do you remember the Crow sale of June 17, 1882?

152 A. I do.

Int. 3. Was John B. Henslee present at that sale?

A. I think he was; I think he was the gentleman that came here.

Int. 4. Did he bid on the property?

A. He bid in the name of Mr. Crow.

Int. 5. Did he give you any directions as to the certificate?

A. He did; he instructed me that as Mr. Robison's judgment was the first, the sale must be made subject to his judgment; he wanted that to appear in the certificate, and it was so put in.

Int. 6. Did Mr. Henslee attend any other sale of the property, if you recollect?

A. I think he attended the Robison sale some time in July, 1882.

Int. 7. Did he bid in the property at that sale in the name

153 of Mr. Robison?

A. He did.

Int. 8. Do you remember receiving a call from counsel for complainant in regard to sales and judgments on the Brittenstene property?

A. I do.

Int. 9. Do you remember stating to counsel at that time that some of the sales had been made subject to the Robison execution?

A. I do; I wish to state that they were made subject to the Robison judgment on the day of the sale, but not so advertised.

Int. 10. Have you received any communications from Mr. Henslee in regard to the Crow judgment?

A. I did, several telegrams and letters; I turned them over to the sheriff.

154 Int. 11. Did Mr. Henslee in these communications give you any instructions as to redemption under the Crow execution, and what?

A. He did; the substance was that the time for redemption had expired, and he instructed me not to receive the money on it; and he sent me in due time the Crow certificate and—or at any rate one certificate, which was endorsed Nelson & Noel, St. Louis; I presume he sent the certificate in order to get a deed.

Int. 12. Have you ever received any instructions in regard to any of the certificates from any one except Mr. Henslee?

A. None; except that Mr. Watson instructed me in making out the certificates; I wish to state here, on reflection, that the Evans certificate of June 10 was sent to the sheriff through the banking house of Hilton, Hallock & Co., with a draft of Mr. Henslee attached, for the amount of the redemption money paid by Mr. White, 1,050 I think, which draft was paid; this is the certificate I refer to
155 in my answer to the 11th interrogatory.

Int. 13. Has the Robison redemption money been claimed, and if so, by whom?

A. I don't know.

And thereupon, on cross-examination, the said witness, GEORGE D. MERRIAM, further testified as follows:

Cross-interrogatory 1. Are you certain that Mr. Henslee desired you to insert in the Crow certificate of sale that that sale was made subject to the Robison sale?

Answer. I proposed to insert that it was made subject to a sale in favor of R. W. Evans & Brother. Mr. Henslee informed me that as Mr. Robison had the prior judgment it should be made subject to his judgment.

x 2. Did he not, in fact, protest, in behalf of Mr. Crow, against your inserting in the certificate of sale that the Crow sale was made subject to any other sale?

156 A. No, sir.

x 3. Did you not in your return recite that it was made subject to both the Evans and the Robison sales?

A. I am not sure whether I did or not, the return having been made before the certificate was made out.

x 4. Are you certain that Mr. Henslee attended at the Robison sale?

A. To the best of my knowledge, he did.

x 5. Did he not leave Buena Vista before the sale took place?

A. I don't know; I don't think he did; he might have left.

x 6. Did Henslee make any bid at the Robison sale for the property?

A. Either he or his agent did in behalf of Geo. M. Robison.

x 7. When Mr. Smith called on you in December last did
157 you not then inform him of the dates of the different sales of the Brittenstene property, and the different dates when the rights of redemption under these sales would expire?

A. I did, and also let him look at the execution docket.

x 8. In the communications you received from Mr. Henslee, about which you have testified in your 11th answer, did he propose to act for himself or for the owners of the certificates of sale?

A. I can't say; he simply signed his name John B. Henslee.

x 9. Did you make the sale in person, under the Crow judgment?

A. I did.

x 10. How did you offer the property?

A. I first read the advertisement of the sale, and then said:
158 "Gentlemen, do you wish to buy any of these claims separately?" Receiving no response, I offered the property for sale to the highest bidder in a lump.

And thereupon, on re-direct examination, the said witness, GEORGE D. MERRIAM, further testified as follows:

Re-direct 1. Was there anything in any communication from Henslee to lead you to believe that there was any one but himself interested?

Answer. I don't think there was.

Re-direct 2. How could you pay the certificate endorsed by Nelson & Moel on a draft of John B. Henslee?

A. It was endorsed either to John B. Henslee, or some banking house, on the back of the certificate; I don't know which. It was endorsed by Nelson & Noel, and I think to Henslee.

(Signed) GEORGE D. MERRIAM.

159 I, the above mentioned Robert H. Buck, a duly appointed and qualified examiner for the United States Circuit Court for the district of Colorado, do hereby certify that before the examinations of the said deposing witnesses, they, the said Griffith Evans, John C. Fogg, and George D. Merriam, were, and each of them was, severally by me duly cautioned and sworn to testify the truth in relation to the matters in controversy between the parties to the above entitled cause; that the said depositions were, and each of them was, taken by me at the office of Ross & Coston, in the Opera Block, Buena Vista, county of Chaffee, in said district of Colorado, on the twenty-second day of March, A. D. 1883, beginning at the hour of ten o'clock in the forenoon; that the said deponents were, and each of them was, carefully examined, and the testimony of each of them was reduced to writing by me, and by no other person, and that after the said depositions were so taken and by me reduced to writing the same as written down were subscribed by the said respective deponents therein, before me, at the place and on the day
160 aforesaid; that the said parties to the said suits were, by their respective solicitors, C. Edgar Smith, on the part of the complainants, and L. N. Buck, on the part of the respondents, present during the whole time of the taking of said testimony; and I do hereby further certify that I am a duly appointed and qualified examiner in chancery for the United States Circuit Court for said

district of Colorado, and that I am not of counsel or solicitor to either of the parties to said cause, nor interested in the event thereof.

Witness my hand, at Leadville, in said district of Colorado, this twenty-second day of March, A. D. 1883.

(Signed) ROBERT H. BUCK,
Examiner.

Examiner's fees, $24.
Paid by plaintiff.

(Endorsed:) 1126; John E. White, ag't, vs. Jos. R. Crow et al.; dep. of Griffith Evans et al., on behalf of complainant; opened, published, and filed Apr. 30, 1883; (signed) Edward F. Bishop, clerk.

161 And afterwards and on, to wit, the 30th day of April, A. D. 1883, the deposition of George F. Robison and C. Edgar Smith was opened, published, and filed in said court and in said cause.

And the said depositions of the said George F. Robison and C. Edgar Smith are in words and figures as follows, to wit:

U. S. Circuit Court, district of Colorado.

JOHN E. WHITE, agt., *agt.* JOSEPH R. CROW et al. } In equity.

Notice of examination of witnesses to be taken orally before R. H. Buck, examiner, &c.

Please take notice that on Wednesday, the 21st day of March, inst., at the office of the above-named R. H. Buck, No. 107 E. 4th st., in the city of Leadville, the complainant herein will proceed to take the testimony of witnesses in his behalf at 10 o'clock a. m. of that day.

(Signed) C. EDGAR SMITH,
162 *Counsel for Compl't.*

TO MARKHAM, PATTERSON & THOMAS,
Solicitors for Defendants.

(Endorsed:) U. S. Circuit Ct., dist. of Colo.; in equity; John E. White, agt., *agt.* Jos. R. Crow et al.; notice of examination; service of the within notice hereby admitted this 15th day of Mar., 1883; (signed) Markham, Patterson & Thomas, solicitors for def'ts.

United States Circuit Court, district of Colorado.

JOHN E. WHITE, agent, *v.* JOSEPH R. CROW et al. } Equity.

The depositions of GEORGE M. ROBISON and C. EDGAR SMITH, both

witnesses of lawful age, produced, duly cautioned, sworn, and examined upon their several oaths on the twenty-first day of March, A. D. 1883, beginning at ten o'clock in the forenoon, at my office, No. 107 East Fourth street, in the city of Leadville, in said district of Colorado, by and before me, Robert H. Buck, an examiner of said court, duly appointed and qualified, pursuant to the notice
163 hereunto attached, on this twenty-first day of March, A. D. 1883, beginning at the hour of ten o'clock in the forenoon. The said witness, George M. Robison, having been by me first duly cautioned and sworn, on oath, testified as follows on the part of the complainants in said cause:

My name is George M. Robison; age, 28; residence, Leadville, Colorado; occupation, surveyor. Our firm of Robison and Sizer were plaintiffs in an action brought in the county of Lake against the Brittenstene Mining Co. The action was begun by attachment, and the property attached was afterwards sold under the judgment.

(Def't objects to the above as secondary evidence.)

Two or three days prior to the sale I met Mr. Henslee, and he told me that he was buying the claims against the Brittenstene property for some other parties, I think St. Louis parties, and he offered to buy my claim and pay me the cash for it, or to bid it in at the sale in my name and pay me the cash for the total amount of the judgment and costs, less twenty dollars, I to assign certificate of sale upon payment of this money. He paid all with the exception of about $100, I think, at the time I assigned, and that he has since
164 paid. We made the arrangement that instead of my attending the sale, which was at Buena Vista, as I had intended, he agreed to attend the sale and bid the property in in my name; and the next day, instead of bidding it in himself, he told me he had left the bid with another party; I am not positive who it was, but think either the sheriff or deputy sheriff. Am positive he said he left before the completion of the sale. I left it entirely to him.

Int. 1. State, if you can, how you happened to bring your suit in the first place.

A. The suit was brought to recover payment for surveys which we had made for the Brittenstene company.

Int. 2. Did you bring suit by advice of anybody, and if so, by whom?

A. I had tried to collect the money in the ordinary way until I got tired of it, and told Mr. Henslee I was going to sue the bill. He replied that he thought that the best plan of obtaining the money. I employed an attorney, and after hearing the case he ad-
165 vised me to sue by attachment.

Int. 3. Were you negotiating in regard to selling the certificate of sale solely with Henslee?

A. I had several conversations with Mr. Henslee after obtaining judgment, prior to issue of execution, in regard to disposing of the judgment and putting off the sale for various reasons. He stated

several propositions purporting to come from the company which I didn't regard as sufficiently definite or satisfactory, and so refused to defer the sale; I think I submitted the proposition to Mr. Weston, my attorney; my negotiation as to selling certificate of sale were solely with Mr. Henslee; the Mr. Henslee spoken of is John B. Henslee, of Leadville.

Int. 4. To whom did you, in fact, assign the certificate of sale?

(Objected to on the ground that the certificate and assignment only are the best evidence on this point.)

A. I don't remember whether I assigned it in blank or to some particular person.

166 And thereupon, on cross-examination, the said witness, GEORGE M. ROBISON, further testified as follows:

Cross-int. 1. How long had your claim against the Brittinstene company for services rendered been due before you brought suit?

A. I don't remember; it might have been six months and it might have been a year.

x 2. Had you not repeatedly presented your claim and demanded payment thereof before bringing suit?

A. Yes, sir.

x 3. Of whom did you demand payment?

A. The bills were presented to John B. Henslee as manager for the company.

x 4. In suing, why did you proceed by attachment?

167 A. I understood that there were other claims against the company, which were too large for me to pay or take second claim; and in order to get first claim my attorneys advised me to commence by attachment.

x 5. After you obtained judgment, was there any proposition made to you or your attorney by or on behalf of the company to delay issuing execution on your judgment?

A. There was.

x 6. Did you on account of that proposition delay issuing execution?

A. The proposition was not definite, and I delayed long enough to get another proposition or make that one definite. The entire time between obtaining the judgment and getting out execution was occupied in trying to make satisfactory settlement.

x 7. About how long did you delay issuing execution because of these propositions?

A. I can't give the time in months and days. Probably three or four months.

168 x 8. Were these proposition to the effect that if you granted them this time they would pay your judgment?

A. Yes, sir.

x 9. After you issued execution, was there any proposition on the part of the company to pay your claim?

A. I don't think there was. There might have been.

x 10. When was it you had the conversation with John B. Henslee in regard to selling the certificate of sale to St. Louis parties?

A. It was one or two days prior to the sale.

x 11. Do you know of your own knowledge whether Mr. Henslee went to Buena Vista and attended the sale under your judgment?

A. I called at his office that day to see if he had gone and was told that he had gone. He afterwards told me that he was there, but left before the completion of the sale.

169 x 12. Did he go down for you, and did you pay his expenses down instead of going yourself?

A. I don't know whether he had other business or not. He paid his own expenses unless they were to come out of that $20. His proposition was to pay his own expenses and the amount of the judgment and costs, if I would deduct $20 from the same.

x 13. Do you know whether Mr. Henslee was acting for himself or other parties?

A. Not of my own knowledge.

x 14. What was your understanding, at the time, in reference to that?

A. I understood that he was acting as agent for somebody.

x 15. How long after the sale was it before you assigned the certificate of sale?

A. I think as soon as the certificate was received here in Leadville, or within a few days after. It might possibly have been

170 a week after.

And thereupon, on re-direct examination, the said witness, GEORGE M. ROBISON, further testified as follows:

Re-direct 1. From whom did the proposition come to delay the issue of the execution?

Answer. From the president of the company, through Mr. Henslee. I believe all propositions came through Mr. Henslee.

(Signed) GEORGE M. ROBISON.

Here complainant introduces the following papers, which are marked respectively Exhibit A and Exhibit B by the examiner, and annexed hereto:

Exhibit A. A deed from the Brittenstene Mining Co. to J. Van Vechten Olcott, receiver, dated Oct. 23, 1882, and recorded in Chaffee county Nov. 13, 1882.

Exhibit B. Certified copy of transcript of proceedings and judgment in case of Joseph R. Crow *vs.* The Brittenstene Silver

171 Mining Company, No. 2292, in the County Court of Lake county.

To the introduction of which defendants object on the ground of incompetency and irrelevancy.

And thereupon the said witness, C. EDGAR SMITH, having been by me first duly cautioned and sworn on oath, testified as follows on the part of the complainants in said cause:

My name is C. Edgar Smith; I am an attorney at law and reside in Denver, Colorado; am counsel for the plaintiff in this action; on December 6th last I received a telegram from the complainant directing me to proceed to Leadville and confer with Ross & Coston and Henslee in regard to claims against the property of the Brittenstene company, and saying that money would be forwarded to pay them; I came to Leadville, arriving on the 7th of December, and not finding Ross and Coston I called on Mr. John B. Henslee and showed him the telegram I had received from Mr. White, and asked him if he could give me any information concerning the property or
172 these claims. Mr. Henslee said he could; that he had been the manager of the Brittenstene company, and that he was fully conversant with its affairs in this state. In explanation of the telegram he said there had been some trouble in the Brittenstene company; that debts had accumulated which they had failed to pay, and that judgments had been procured and several sales of the property made; he further said that the assessment work on the different lodes of the company had been arranged for by him, and that the work was in part done, and the whole of it would be done on that day or the next; I asked him if he had the affidavits of labor, and he said that two had been sent him and the other six he expected in a day or two; I told him that I was ready to pay for any assessment work, and would pay him if he had the affidavits of labor, and asked him for them; he said he couldn't just then lay his hand on the two he had received, but he would search for them and could probably find them before I left town; I asked him how much the claims against the company amounted to, and he said about six thousand dollars, and that he would make a memorandum
173 and see me again at the Grand Hotel. He asked me at that first interview what Mr. White intended to do. I answered that he knew as much about it as I did, but that the telegram which we had before us would seem to indicate that Mr. White had bought the property at a judicial sale in New York city, and was going to pay the claims and judgments which existed against the property. I asked him who were the owners of the claims and what were the amounts. He said he would give me a memorandum, but that the claims were all within his control and different parties were interested with him in them. He further said that he had just received a telegram from Mr. White asking him for ten days' further extension of time to pay the claims, and that his relations with Mr. White were such that he thought he and Mr. White could make satisfactory arrangement. After some further conversation we parted, he promising to meet me at the hotel, which he did, I think, just after dinner. He then handed me this memorandum, which is now copied by the examiner:

174	Lake, Robinson, June 24	488 67
	Lake, Crow, June 17	1,794 33
	Evans 2, June 10	2,049 88
	Lake, Faulkener	136 00
		$5,018 87
	Int	216 00
		$5,234 97
	Assessments	800 00
		$6,034 87

He explained to me that the word Lake meant that the judgments were in the Lake County Court, and that the others were in Chaffee county. We had some further conversation, when he again asked what Mr. White was going to do, to which I replied that my orders were to pay all the claims, and that I intended to do so as soon as I could get the information to do so with safety to myself, and that if he had any assignments of these judgments or any affidavits of labor so that he could give me proper vouchers I would pay the money at once, or if he would meet me at Buena Vista, where I should be the next day, I would do the same there, or I would
175 meet him anywhere for that purpose as soon as I could sufficiently inform myself so as to know that I was using the money right. He said he had searched for the certificates but couldn't find them, but that if I paid him the money for the affidavits it would be all right and he would send the two which he had received and when the other six were received would send them. He might have offered at the same time to take the money from me for the purpose of settling the claims. If he did I have forgotten it, but I declined to pay him any money for the affidavits of labor until I could see them and know that they were right. He said that one R. B. Hamilton, foreman of the Brittenstene company, was doing the work on six of the lodes, and that if I was going to St. Elmo I could see him and find out all about the work.

I saw him again that day before leaving Leadville, on the street, when he told me again that he couldn't find the two affidavits of labor, and asked me to pay the money for them, and when found he would send them to me. This I declined to do, but told him I
176 would pay for the assessment work and all the other claims just as soon as I could find what was to be paid and to whom, and could get proper vouchers to protect myself. I parted with him on the street intending to take the evening train for Buena Vista, but stayed all night, and met Mr. Henslee again in the evening at the telegraph office. He said he was writing a telegram to Mr. White in reply to one received from him, and that he was making a proposition to Mr. White, giving Mr. White an extension of time, providing Mr. White would allow him a certain interest in the Britten-

stene property. When I left him I told him I was going to Buena Vista and St. Elmo, and that I would probably see him again in a few days; that I was anxious to get through with the business as soon as possible, and to pay everything for which Mr. White was liable; that he could not expect me to pay him money when he had no assignments or affidavits which would answer as vouchers for my payments.

I wish to say that in the first interview at his office, Mr. Henslee, while searching for the affidavits of labor, and after telling me that he either owned, controlled, or had an interest in these several claims, took from one of his drawers either a letter or a receipt from
177 one W. C. Shinn, or from Edward R. Howe, showing that he had paid or in part paid to Shinn a certain sum of money for the Howe judgment. He showed this to me in order to prove what I doubted, that he owned the judgment. I said it was not sufficient for me to pay money on, and that he must have a legal assignment. He told me that Howe had given a power of attorney to this man Shinn, with whom he had dealt and was dealing for the judgment of Howe. Mr. Henslee and I parted that evening with what I supposed was an understanding that we were to meet again if necessary, for the settlement of the claims, he saying that he would meet me wherever I said, and I saying that we would arrange that for our mutual convenience.

I state positively that Mr. Henslee and I never had one word of conversation looking towards arranging for any extension of time, because my orders were to satisfy myself in regard to all claims and to liquidate them as soon as possible. On the morning of Dec. 8th I went to Buena Vista. I found that Ross & Coston were attorneys there, and that they had been employed in some way by the
178 receiver of the Brittenstene company. I went immediately to the sheriff's office and found it in charge of a deputy, one G. D. Merriam; told him my business and asked him what he could tell me about the Brittenstene property. He turned to his books and gave me the following as sales which had been made by the sheriff of the Brittenstene property:

Sale June 10, 1882, on judgment of R. W. Evans and Brother, of real property, bid on by Griffith Evans for $1,000	$1,000 00
Sale July 12, 1882, on same judgment, personal property, bid in by Griffith Evans, $380.30	380 30
Sale June 17, 1882, on judgment of Joseph R. Crow, real estate, bid in by Crow for	1,718 27
Sale July 8, 1882, on judgment of George M. Robison, real estate, bid in by Robison for	466 55
Sale Aug. 19, 1882, on judgment of R. W. Evans and Brother, same as above, real estate, bid in by Griffith Evans for	1,049 88

Mr. Merriam stated that the sales of June 10 and June 17 were made subject to the execution of George M. Robison. On Dec. 9, 1882, I paid the sheriff or his deputy $1,050 on the sale of June 10 to Griffith Evans, and received a certificate of redemption from the sheriff. I went to St. Elmo and found the former foreman,
179 R. B. Hamilton, in charge of the Brittenstene property, and that he had completed or about completed the assessment work for 1882 on five different lodes, and he said that Mr. Henslee had hired him to do the work for the Brittenstene company, and that Henslee had written him that he must look to Mr. White for his money, as he, Henslee, had no further interest in the matter, or would not be responsible therefor, or words to that effect. Mr. Hamilton had a further claim of $25 for work in cleaning out a shaft by order of Mr. Henslee, which he said Mr. Henslee had written him that Mr. White should pay. Not wishing a dispute about $25, I paid Mr. Hamilton that sum and $500, and took from him the affidavits of labor of five of the Brittenstene lodes. I visited the property in Grizzly gulch; found it as I have said in possession of Mr. Hamilton, the former foreman; told him whom I represented, and that I desired to take possession of the property, which I accordingly did, and turned over possession to one H. H. Horne for Mr. White.

I found some of the personal property sold on sale of July 12
180 had been removed, but the heavy machinery, engine, boiler, air-compressors were all in their place on the property.

I returned to Buena Vista, and while there received a telegram from John B. Henslee that he had found the two affidavits of labor and asking what he should do with them. I replied, telling him to attach the affidavits to a draft on me through Hiller, Halleck & Co., bankers, Buena Vista. This he did, and I paid the draft, amounting to $201.50, adding a few days' interest or exchange, I don't know which. Before leaving Buena Vista I examined the records in the county recorder's office containing the certificate of sale, and found that the certificates of June 10 and June 17 recited that the sales thereunder were made, as the sheriff had stated to me, subject to the execution of George M. Robison.

I also made another trip to Leadville before returning home, and examined the records of the Lake County Court relating to the Crow judgment and the Robison judgment, and finding that the Crow judgment was based on a claim of John B. Henslee, and that the judgment had been entered four days after service of summons on him by his consent or confession, I felt unauthorized to pay
181 that judgment until I could get instruction from Mr. White. I sent Mr. White a full statement of the Crow matter and what I had done, and returned to Denver.

I received instructions as soon as he could reply to pay off everything. I accordingly came to Buena Vista again; I can't give the date, but it was a few days after the 17th day of December. I called at the sheriff's office and offered to pay him the amount of the Crow certificate of sale. Mr. Merriam, the deputy in charge, declined to

receive the money, as he said he had been instructed by John B. Henslee not to receive it. Subsequently—I think on June 2, 1883—Mr. Henslee by appointment met me in Buena Vista to confer in regard to the Crow certificate and settlement of the same. He then told me that he had but a slight interest in the matter, but that he did not feel authorized to receive the money on that certificate; that he had written Mr. White proposing that all the parties interested in the several judgments and certificates should unite with Mr. White,
182 all to become owners of the property and raise the capital to work it for their mutual advantage. I at that time offered to pay him the money for the certificate, which he declined to receive. He at that time, as well as at previous interviews, supposed that the Robison judgment was the senior judgment of all. I think it was on that visit that I made a more thorough examination in the recorder's office and found that the sheriff's certificate of levy in the Robison attachment was not filed till the 20th of Jan'y, 1882, while the Crow judgment was entered in the same office on Jan'y 17, 1882. I had previously taken it for granted that the recital in the sheriff's two certificates of June 10 and June 17 that the Robison execution was prior, was correct. I have paid for Mr. White—

On the sale of June 10	$1,055 00
On the Robison sale of July	489 87
A judgment of one Falkenan	136 00
A judgment of E. R. Howe	572 00
Labor assessments	825 00
A justice judgment in St. Elmo of one Dean	51 75
	$3,129 62

During the time the above evidence of witness Smith was given the defendants objected to all testimony concerning the im-
183 pressions, suppositions, feelings, and thoughts of deponent to all the evidence relating to the assessment work, and all conversations relating to the assessment work, and to all testimony concerning the contents of the latter instruments and records, and to all conversations had with persons other than defendants to the *absence* of defendants, and to the evidence and testimony concerning the contents of all telegrams and letters and memoranda, and by agreement of counsel the objection is appended at the end of the testimony instead of being inserted pending the giving of the same.

And thereupon, on cross-examination, the said witness, C. EDGAR SMITH, further testified as follows:

Cross-interrogatory 1. Was the telegram received on December 6 the first communication you received from Mr. White concerning this matter?

Answer. It was.

Cross-int. 2. Have you that telegram with you? If so, please produce it, and file it as a part of your deposition.

184 A. I have not got it with me. But I can file it if desired.

(M'ch 28.—Telegram filed, and marked Exhibit C.; R. H. B., examiner.)

x 3. Have you any of the letters and telegrams from Mr. White to you in relation to this matter, and if so will you file them as a part of your deposition?

A. I have a telegram from Mr. White directing the payment of the Crow certificate, which I am willing to file. I haven't it with me.

x 4. Were those two telegrams all the telegrams and letters received by you from Mr. White between Dec. 6, 1882, and the institution of this suit?

A. By no means. I had numerous letters from him.

x 5. Will you produce those letters and telegrams, and file them as a part of your testimony?

A. I will not. They are letters of a client to his counsel and cover a great variety of subjects which I have no right to reveal.

x 6 Have you copies of the letters and telegrams sent by
185 you to Mr. White in relation to this matter?

A. I have some copies, but no copy of the first letter written to him, which I think I wrote at the Lake House in Buena Vista, about the 12th or 13th of December.

x 7. Will you furnish those copies of your letters and telegrams to Mr. White which you have, and file them as part of your deposition?

A. If I had any I would; I have no copies of my letters written to Mr. White, as I now recollect, until some time in January; I will say, however, that possibly I made a copy of the aforesaid letter written at the Lake House, and if I have it I am willing to furnish it.

x 8. Will you furnish copies of those written in January you speak of, and file them as part of your deposition?

A. I certainly will not; it would be highly improper for me to do so.

x 9. Who was present on Dec. 7, 1882, when you had the
186 first conversation with John B. Henslee, besides yourself and Henslee?

A. Mr. Croww as in and out of the office at the time, and my impression is that other parties were in and out.

x 10. Do you know who those other parties were?

A. I do not.

x 11. Did you not prior to that conversation examine the records of Chaffee county and Lake county?

A. I had not; I knew nothing about the judgments or when they were entered until told by Mr. Henslee.

x 12. In that conversation, did not Mr. Henslee inform you that the time of redemption under the Crow sale would expire on Dec. 17, 1882?

A. He did not.

x 13. Did he not tell you the day when the property was sold under the Crow judgment?

187 A. Not at that interview.

x 14. He told you that then, during that day, did he not?

A. I think likely he did, because it appeared on the memorandum which he handed me afterwards.

x 15. Did you not then know, on Dec. 7, 1882, that the time for redemption from the Crow sale would expire on Dec. 17, 1882?

A. I knew that the 6 months from the sale would expire on Dec. 17, 1882. I didn't know, and don't know now, that the time for redemption expired on that day.

x 16. Did you not, on Dec. 7, 1882, ask Mr. Henslee if the parties owning the certificates of sale would not extend the time within which to redeem the property?

A. I did not. I never had a word of conversation with him on that subject on that day or any other, except that Henslee said he had a telegram from White in relation to the matter, and re-

188 plied to it.

x 17. Did not Mr. Henslee tell you on that day that the owners of the certificates would not extend the time for redemption of the property?

A. He did not. On the contrary, he told me he was willing to give Mr. White an extension on certain conditions.

x 18. Was that offer made at the interview in Henslee's office?

A. He made me no offer, and I didn't ask him for any.

x 19. Did Mr. Henslee offer any obstructions or delays from Dec. 6 to Dec. 17 to prevent or hinder your redeeming the property from the Crow sale.

A. Nothing, except that when he told me that he controlled the whole matter I told him that I was ready to buy if he would present any evidences on which I could pay, and in all our conversations it was expected and assumed, I think, by both that Mr. Henslee

189 and I would meet within a few days after that interview.

x 20. Did he not offer to aid and assist you in paying off these claims and free the property from the liens and incumbrances on it?

A. He did not, unless you call it aid in being willing to take between $6,000 and $7,000 from me on a mere pencil memorandum which he handed me, and without giving me an iota of a voucher for my protection except his receipt.

x 21. Did he not offer, if you would furnish him the money to pay off all the liens and claims before the respective times of redemption would expire?

A. He did not. His continual question to me was, "What is Mr. White going to do?" and as far as I could determine he seemed in some anxiety about the matter.

x 22. Was there anything in Mr. Henslee's conversation or conduct during these conversations that would lead you to be-

190 lieve that he or the parties owning the claims would not be

willing to receive them provided they were paid before the time for redemption expired?

A. There was everything in his conduct and conversation to lead me to suppose that he alone either owned or controlled all the claims, and he said so. In answer directly to your question, I have no doubt he would have taken the $6,000 odd from me, but I didn't dare to pay it to him, he exhibiting nothing on which I could pay it.

x 23. Did not Henslee tell you then that other parties owned these claims, but that if he had the money he could and would pay them off in due time?

A. He did not tell me that other parties owned the claims exclusively. He said others were interested with him, some here, some in St. Lou s.

x 24. Was the receipt you spoke of from Shinn or Howe made to Henslee or to some other person?

191 A I can't say; I can say, however, that he said *he* had paid whatever was paid and had bought the judgment, and mentioned nobody else connected with that judgment.

x 25. Did you examine the records of the Lake County Court when you were in Leadville on Dec. 7?

A. I might have done so partially, but I think I made my memoranda on a second visit to Leadville, a few days after.

x 26. Did you examine the records of the recorder's office in Chaffee county on Dec. 8, 1882?

A. I think I examined the lien book and looked at the certificates of sale which had been filed, but I never discovered the date of the filing of the Robison attachment until some time subsequent to the 17th; I will add that on my second visit to Leadville, 3 to 5 days after the 7th, I examined the Lake county records in the Robison case and in the Crow case, and found the sheriff's certificate of attachment in the Robison case was made on the 13th, and I

192 relied on that.

x 27. Did you on Dec. 8, 1882, examine the records of Chaffee County Court and the records in the sheriff's office of Chaffee county?

A. I interviewed the sheriff and got his statement as I have stated, and I think I examined the lien book for the certificate of sale; I think that is all the examination I made that day; I might have done more.

x 28. Did you not from those examinations then ascertain that the transcript of the Crow judgment was filed for record in Chaffee county on Jan'y 17, 1882, and that the sheriff's certificate of levy of the attachment in the Robison suit was filed for record on Jan'y 20, 1882?

A. I am sorry to say that I did not discover that at that time; that is, I presume I did discover that the Crow judgment was filed Jan'y 17, but having seen the sheriff's return here in Lake county on the Robison attachment, and that reciting that the attachment was made

on Jan'y 13, made me rest easy, and besides I relied on the
193 sheriff's statement and the recital in the certificate; I had had several interviews with Mr. Henslee before I discovered the true date of the record of the Robison attachment.

x 29. Was not the sheriff's certificate of levy of the Robison attachment recorded in the book of liens which you say you examined?

A. I didn't find it until after the 17th; I don't know whether it is in that book or some other.

x 30. Did you not see on the writ itself as returned by the sheriff among the papers in the Lake county court the certificate of the recorder of Chaffee county, showing when and where that writ of attachment was recorded?

A. I did not; if it was there it escaped me; I don't believe it was or is there.

x 31. From the examinations you made, and your conversations with Mr. Henslee, did you not know on Dec. 8, 1882, that the time for redemption from the Crow sale would expire on Dec. 17, 1882?

194 A. I have already answered that question; I now say in addition that it is a question of law whether the time for redemption of Crow certificate expired on Dec. 17; if the Robison was senior I do not believe it did.

x 32. Did you telegraph or write on Dec. 7 or 8 to Mr. White that the time for redeeming the property from the Crow sale would expire on Dec. 17, 1882?

A. I did not.

x 33. When did you first write or telegraph Mr. White after Dec. 7?

A. When I paid the sheriff the money on the Evans certificate, which was the 9th, I think I sent a telegram to Mr. White.

x 34. When did you first communicate to Mr. White the fact that the time for redemption from the Crow sale would expire on Dec. 17, 1882?

A. I never communicated it to him; in the letter heretofore spoken of, written from the Lake House a few days after the
195 7th, I gave him all the facts and asked for his instructions, and told him then that the Robinson was the senior.

x 35. Did you tell him in that letter that the time for redemption under the Crow certificate would expire Dec. 17, 1882?

A. I did not. I gave him the dates of all the sales. If I told him anything it was that we had ample time, by redeeming the Robison certificate on or before Jan'y 8th.

x 36. Have you a copy of that letter; and will you produce it and file it as a part of your testimony?

A. I am not certain. If I have it I am willing to file it.

x 37. In that letter did you inform Mr. White that the law required the property to be redeemed within six months from date of sale?

A. I might have told him that; and I certainly advised him that by redeeming from the senior he could control the whole.

196 x 38. Did you not have, from Dec. 7 until Dec. 17, 1882, ample authority from Mr. White to redeem from said Crow and the other sales?

A. I think I did; but I could not with prudence use a client's money in payment of a judgment and certificate so manifestly irregular and fraudulent as I consider that to be, and I deemed it a duty to myself and necessary to my protection that Mr. White should be informed of the character and history of that judgment. I would have paid it had I dared to.

x 39. As a matter of fact, you then knew as early as Dec. 7 that the time for redemption from the Crow sale would expire Dec. 17, 1882?

A. As a matter of fact I did not then, and I do not now, know that the time for redemption under the Crow certificate expired Dec. 17. I did not know until near Jan'y 1 that the Crow judgment was filed prior to the sheriff's certificate of the Robison levy, and as a matter of fact and of law I now believe the Crow judgment and sale to be invalid and void.

197 x 40. You did not have this opinion about the invalidity of the Crow judgment, did you, until after Dec. 17, 1882?

A. I did. I held that opinion on my second visit to Leadville, when I examined the records of Lake county.

x 41. On what day did you receive an answer from Mr. White to the letter you wrote him from the Lake House, Buena Vista, on or about Dec. 10, 1882?

A. I think about Dec. 20. It was before Christmas. It was a telegram, I think, and I think I can produce it.

x 42. You did not receive an answer, then, before Dec. 17, 1882?

A. I did not. If I had, the money would have been paid.

x 43. Was not the reason Henslee gave you for refusing to receive the money on the Crow sale that he had no authority from the parties owning the certificate to receive it after the time for redemption had expired?

198 A. He so stated, and also wrote me to that effect.

x 44. Did not the sheriff of Chaffee county likewise give to you as a reason for refusing to receive the money under the Crow sale that the time for redemption had expired?

A. He did not. He simply said that Mr. Henslee had written Sheriff Ray and instructed him not to receive the money under the Crow certificate.

x 45. Did you not discover in your examinations of the records of Lake and Chaffee county courts, and of the recorder's office of Chaffee county, a great many mistakes and clerical errors made by the sheriff of Chaffee county in making out the returns and writs and certificates of sale, &c.?

A. I don't remember that I did. I remember one mistake in one

of the certificates in giving the date when the purchaser would be entitled to a deed, making it 8 months instead of 9.

199 x 46. Would you not as a lawyer, on account of the mistake or mistakes you thus discovered, avoid relying upon the statements of the sheriff in the certificate of sale?

A. No, sir; I know of no reason why I should. It is a public record.

(Signed) C. EDGAR SMITH.

I, the above-named Robert H. Buck, a duly appointed and qualified examiner for the United States Circuit Court for the district of Colorado, do hereby certify that before the examinations of the said deposing witnesses, they, the said George M. Robinson and C. Edgar Smith, were and each of them was severally duly cautioned and sworn by me to testify the truth in relation to the matter in controversy between the parties to the above-entitled cause; that the said depositions were and each of them was taken by me at my office, No. 107 east Fourth street, in the city of Leadville, in the state and district of Colorado, on the twenty-first day of March, A. D. 1883, beginning at the hour of ten o'clock in the forenoon; that the said deponents were and *and* each of them was carefully examined, and the testimony of each of them was reduced to writing by me

200 and by no other person, and that after the said depositions were so taken and by me reduced to writing the same as written down were subscribed by the said respective deponents therein before me at the place and on the day aforesaid; that the said parties to the said suit were by their respective solicitors—C. Edgar Smith on the part of the complainants, and L. N. Buck on the part respondents—present during the whole time of the taking of said testimony.

And I do hereby further certify that I am a duly appointed and qualified examiner in chancery for the United States Circuit Court for said district of Colorado, and that I am not of counsel or solicitor to either of the parties to said cause nor interested in the event thereof.

Witness my hand at said Leadville this twenty-first day of March, A. D. 1883.

(Signed) ROBERT H. BUCK,
Examiner.

Fees of examiner, $20.35. Paid by plaintiffs.

Exhibit A—deed from Brittenstene Silver Mining Company to J. Van Vechten Olcott, receiver—withdrawn by leave of court. See order July 26th, A. D. 1883.

201 B.

Be it remembered that on, to wit, the 7th day of January, A. D. 1882, the same being one of the regular days of the January term

of said court in said year, Joseph R. Crow, plaintiff in a cause in said court wherein Joseph R. Crow is plaintiff and the Brittenstene Mining Company is defendant, No. 2292, came, by his attorneys, Mess. Danford & Early, and filed his complaint in said cause in said court, which complaint is in words and figures as follows, to wit:

In the County Court of Lake, state of Colorado.

STATE OF COLORADO, } *ss.*
County of Lake, }

JOSEPH R. CROW, pl'ff,
vs.
THE BRITTENSTENE SILVER MINING COMPANY, def't.

The plaintiff complains and alleges:

1st. That on or about the 2 day of January, 1882, the defendant was justly indebted to one John B. Henslee for money paid,
202 laid out, and expended by said Henslee for the said defendant, and at its instance and request, in the sum of fifteen hundred seventy-seven 34-100 dollars, ($1,577.34,) all of which sum was then due and owing by and from defendant to the said John B. Henslee.

2nd. That on said 2nd day of January, A. D. 1882, the said John B. Henslee, for a valuable consideration to him paid by the plaintiff, sold, assigned, transferred, and delivered to plaintiff all of his right, title, and interest in and to said debt, claim, and demand and chose in action of $1,577.34, held and owned by said Henslee against said defendant as aforesaid, and of which said assignment the said defendant at the time had notice.

3rd. The plaintiff alleges that there is justly due from the defendant to the plaintiff upon said debt, claim, and chose in action the full sum of $1,577.34.

4th. The plaintiff further alleges and avers that the amount involved in this action for which relief is sought does not exceed the sum of two thousand dollars, ($2,000.)

Whereupon plaintiff demands judgment against the said
203 defendant for said sum of fifteen hundred and seventy-seven 34-100 dollars and costs of suit.

DANFORD & EARLY,
Pl'ff's Att'ys.

(Endorsed:) 2292; Joseph R. Crow *vs.* The Brittenstene Silver Mining Company; complaint; filed Jan'y 7th, 1882; Wm. Raymond, clerk; Danford & Early, pl'ff's att'ys.

And afterwards and on, to wit, this same day, a summons issued out of the clerk's office of said court and under the seal thereof, directed to said defendant, which summons, together with the sheriff's return thereon, is in words and figures as follows, to wit:

STATE OF COLORADO, *Lake county,* } *ss.*

In the County Court within and for the county of Lake aforesaid.

204 *Summons.*

JOSEPH R. CROW, plaintiff,
vs.
THE BRITTENSTENE SILVER MINING COMPANY, defendant.

To the people of the state of Colorado, send greeting:

To the said , defendant: You are hereby required to appear in an action brought against you by the above-named plaintiff in the County Court in and for the county of Lake, in the state of Colorado, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served out of this county but in this judicial district, within twenty days; otherwise within forty days; or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to recover the sum of fifteen hundred and seventy-seven dollars and thirty-four cents, due from defendant to plaintiff upon an account for money paid, laid out, and expended by one John B. Henslee for the defendant, which claim has been assigned to plaintiff by said Henslee, particularly described
205 in the complaint; also for interest thereon at the rate of —— per cent.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the said sum of fifteen hundred and seventy-seven dollars and cents, with interest and costs.

Given under my hand and the seal of the County Court of said Lake county, at Leadville, in said county, this 7th day of Jan'y, A. D. 1882.

[SEAL.] (Signed) WM. RAYMOND,
Clerk of the County Court.

STATE OF COLORADO, *County of Lake,* } *ss.*

I do hereby certify that on this 9th day of January, A. D. 1882, I duly executed the within summons by delivering personally a true copy to J. B. Henslee, state agent for within-named defendant, no other officer of said company being in my county.

(Signed) S. R. TUCKER,
Sheriff.
By J. R. JEFFREY,
Deputy.

206 (Endorsed:) Docket No. 2292. County Court summons. Joseph R. Crow, plaintiff, *vs.* The Brittenstene Silver Mining

Company, defendant. State of Colorado, Lake county, ss. Office of sheriff of said county, , 188 .—I hereby certify that I received the within summons on the day of , A. D. 188 , & personally served the same on the day of , A. D. 188 , by delivering a copy of said summons to each of the within-named defendants personally at , in said county. , sheriff, by , deputy. Sheriff's fees.—Service & return, $1.50; mileage, miles, 40c.; total, $1.90. Danford & Early, plaintiff's attorneys. Filed January 10, A. D. 1882. Wm. Raymond, clerk.

And be it remembered that afterwards and on, to wit, the 13th day of January, A. D. 1882, the same being one of the regular days of the January term of said court in said year, the following proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH R. CROW
vs. } 2292.
BRITTENSTENE SILVER MINING COMPANY.

At this day came said plaintiff by Messrs. Danford & Early, his attorneys, and thereupon came John B. Henslee, general agent for said defendant herein, and consents that judgment may be entered herein against said defendant and in favor of said plaintiff
207 for the sum of fifteen hundred seventy-seven & 34-100 dollars.

Wherefore it is considered by the court that said plaintiff do have and recover of and from said defendant said sum of fifteen hundred and seventy-seven and 34-100, together with said plaintiff's costs and disbursements incurred in this behalf, and that execution issue therefor.

And afterwards and on, to wit, the sixth day of May, A. D. 1882, the same being one of the regular days of the May term of said court in said year, an execution was issued out of the office of the clerk and under the seal of said court, which execution, together with the sheriff's return thereon, and the proof of publication thereto attached, is in words and figures as follows, to wit:

STATE OF COLORADO, } ss.
Lake county,

The people of the state of Colorado to the sheriff of Chaffee county, greeting:

We command you, that of the lands, tenements, goods and chattels, and chattels real, of Brittenstene Silver Mining Company, defendant, in your county, you cause to be made the sum
208 of one thousand five hundred and seventy-seven dollars and thirty-four cents, which Jos. R. Crow, plaintiff, lately in the County Court of said Lake county, at a term thereof begun and held at Leadville, in said county, on the first Monday of January, A. D. 1882, recovered against said defendant, and which by the said

court was adjudged to the said plaintiff for his damages by him in this behalf sustained.

And also the further sum of nineteen dollars and ten cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, included in the annexed fee-bill, whereof the said defendant was convict, as appears to us of record.

And you have these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make a return of this writ, with an endorsement thereon, in what manner you shall have executed the same, within ninety days from the date hereof.

Witness Wm. Raymond, clerk of the said court, and the seal thereof, at Leadville, in said county, this 6th day of May, A. D. 1882.

(Signed) WM. RAYMOND,
Clerk.

[SEAL.]

209 Whole No., 2282; Term No. —. Ex. No. Record Book 4. Page. Fee Book. Page.

In the County Court, Jan'y term, A. D. 18—.

STATE OF COLORADO, *Lake county,* } *ss.*

In the matter of Jos. R. CROW
versus
BRITTENSTENE SILVER MINING COMPANY.

Plaintiff's costs. — Clerk's fees, $17.20; sheriff's fees, $1.90— $19.10.

I, Wm. Raymond, clerk of the County Court of said county of Lake, do hereby certify that the above is a true copy from my fee-book of plaintiff's costs.

Given under my hand and the seal of said court.

[SEAL.] (Signed) WM. RAYMOND, *Clerk.*

STATE OF COLORADO, *Chaffee county,* } *ss.*

I hereby certify that the within execution came in my possession upon the 9th day of May, A. D. 1882.

(Signed) ROBERT RAY,
Sheriff of Chaffee co.

210 STATE OF COLORADO, *Chaffee county,* } *ss.*

By virtue of the within execution I have this 9th day of May, 1882, levied the following real estate, to wit, the lode mining claim known and recorded as the Lilly, recorded in book 10, page 287; the Virginia lode, recorded in book 10, page 285; the Rebecca, recorded

in book 11, page 350; the Highland, recorded in book 11, page 352; the Bob Lee, recorded in book 10, page 286; the Quincy, recorded in book 10, page 594; the St. Louis, recorded in book 11, page 357; the Morning Star, recorded in book 11, page 351; the Virginia Tunnel Site, recorded in book 11, page 164; the Alabama and Georgia, both being included within the side lines of the Quincy lode above described; the Great Eastern and Great Western, both being within the side lines of the Morning Star above described. All of said property is situated on the easterly slope of Grizzly or Chrysolite mountain, on the declivity towards Grizzly gulch, in Chalk creek mining district, Chaffee county, Colorado, and belonging to the within-named defendant, as appears of record in book 7, page 450, to which reference is hereby made.

(Signed) ROB'T RAY, *Sh'ff.*

211 Advertised in the Buena Vista Herald May 24th, to be sold June 17th, 1882, at 11 o'clock a. m., in Buena Vista.

STATE OF COLORADO }
County of Chaffee, } ss.

I hereby certify that between the hours of 9 a. m. and the setting of the sun of the same day, I did at public auction sell the above-described property to Joseph R. Crow, he having made the highest and best bid, to wit, that of $1,718.27, subject to execution in favor of Geo. M. Robison for $400.90, and of a previous sale to J. D. Evans for $2,151.85, and that I have on this 24th day of June, A. D. 1882, delivered to J. R. Crow a certificate of sale.

(Signed) R. RAY, *Sheriff,*
By G. D. MERRIAM, *Deputy.*

(Endorsed:) No. 2292. January term, A. D. 1882. Execution, fi. fa., and fee bill. County Court. Jos. R. Crow *versus* Brittenstene Silver Mining Company. Debt, $1,577.34; costs, $19.10; total amount, $1,596.44. The sheriff will collect interest from January 13, 1882. (Signed) Wm. Raymond, clerk. Sheriff's fees: Levying execution, $2.00; cert. cers., 2.00; advertising property, 14.80; miles travel, 20c.; commission on $. 31.92; returning execution, 75c.; certificate of purchase, 2.00; total, $53.67. Filed this 17 day of July, A. D. 1882. (Signed) Wm. Raymond, clerk.

Proof of publication attached to sheriff's sale.

212 *Sheriff's Sale.*

By virtue of an execution issued out of the clerk's office of the County Court of Lake county and state of Colorado, to me directed, whereby I am commanded to make the amount of a certain judgment recently obtained against the Brittenstene Silver Mining Com-

pany in favor of Joseph R. Crow, out of the lands, tenements, goods, and chattels of the said Brittenstene Silver Mining Company, I have levied upon the following property, to wit:

The lode mining claims known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Virginia Tunnel Site, the Alabama, and Georgia, the Great Eastern and Great Western. All of said property is situated on the eastern slope of Grizzly or Chrysolite mountain, on the declivity towards Grizzly gulch, in Chalk creek mining district, Chaffee county, Colorado. For a more particular description, reference is hereby made to book 7, page 450, of the records of mining deeds of said county.

Therefore, according to said command, I shall expose for sale, at public auction, all the right, title and interest of the above-
213 named Brittenstene Silver Mining Company in and to the above-described property, on Saturday, the 17th day of June, 1882, at 11 o'clock a. m., at the front door of the building now used as a court-house in Buena Vista, Chaffee county, Colorado.

Dated at Buena Vista this 24th day of May, 1882.

ROBERT RAY,
Sheriff of Chaffee county.

I, W. R. Logan, one of the publishers of the Buena Vista Herald, a weekly newspaper published in Buena Vista, Colorado, do hereby certify that the annexed notice has been published in said paper for four consecutive weeks; 1st publication May 24th, 1882; last publication June 15, 1882.

W. R. LOGAN.

Sworn to before me this 24th day of June, 1882.

[SEAL.] GEORGE D. MERRIAM,
Notary Public.

STATE OF COLORADO, }
County of Lake, } *ss.*

I, Geo. D. Talbot, clerk of the County Court in and for the county and state aforesaid, hereby certify that the above and forego-
214 ing is a true and correct transcript and copy of all proceedings had and entered of record in said cause, wherein Jos. R. Crow is plaintiff and the Brittenstene Silver Mining Company is defendant; and I further certify that the above and foregoing are true and correct copies of all papers filed in said cause in said court.

Witness my hand and the seal of said County Court at Leadville, Colorado, this 19th day of March, A. D. 1883.

[SEAL.] (Signed) GEO. D. TALBOT,
Clerk.

(Endorsed:) 2292; Jos. R. Crow *vs.* The Brittenstene Silver Mining Company; transcript; exhibit B; R. H. B., examiner; Danford & Early, plaintiff's attorneys.

C.

Received at Denver, Colo., Dec. 6, 1882. Dated New York, 6.

To EDGAR SMITH, room 6, McClelland Block.

Go instantly Windsor Hotel, Leadville; meet, confer with
215 Rose & Caston, att'ys. Shall write you Thursday or Friday six thousand dollars with instructions.

(Signed) JNO. E. WHITE.

(Endorsed:) 1126; Circuit Court U. S.; John E. White, agent, *vs.* Jas. R. Crow et al.; dep. of Geo. F. Robison et al. in behalf of complainant; opened, published, and filed Apr. 30, 1882; (signed) Edward F. Bishop, clerk; rec'd, John E. White, Dec. 6, '82; Exhibit C, R. H. B., examiner.

And afterwards and on, to wit, the second day of May, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court—present: the Honorable Moses Hallett, district judge—the following further proceedings was
216 had and entered of record in said court and in said cause, to wit:

Bill for an Injunction and other Relief.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW et al. } 1126. In chancery.

On the annexed consent of counsel in the above-entitled case it is hereby ordered that the clerk of this court pay to C. Edgar Smith, of counsel for complainant, the sum of four hundred and four & 7-100 ($404.07) dollars out of the sum of thirty-two hundred and fifty (3250) dollars heretofore deposited by complainant in the registry of this court as security pending the order of injunction hereinbefore issued; and it is further ordered that this action be dismissed as to Griffith Evans, one of the defendants, without costs as against him subsequent to the entry of this order, but with costs as against him up to the date of the entry of this order.

And the "consent of counsel" in the last above order of court referred to is in words and figures as follows, to wit:

U. S. Circuit Court, district of Colorado.

217 JOHN E. WHITE, agt.,
against
JOSEPH R. CROW et al. } In equity.

It is hereby consented that an order may be entered in the above-named action allowing the complainant's counsel to withdraw from

the fund deposited in court as security herein the sum of four hundred and four & 7-100 ($404.07) dollars, the same being the amount bid by Griffith Evans, one of the defendants, for the personal property involved in this action, and that the action be dismissed as to said Evans, without costs as against him subsequent to the entry of this order, but with costs as against him up to the date of the entry of this order.

(Signed) MARKHAM, PATTERSON & THOMAS,
L. N. BUCK, *of Counsel for Defendants.*
SMITH & KELLOGG,
Counsel for Complainant.

(Endorsed:) 1126; U. S. Circuit Court, dist. of Colorado; John E. White, agt., against Jas. R. Crow et al.; in equity; consent & order to withdraw money; ent. book 4, p. 430; filed May 2, 1883; (signed) Edward F. Bishop, clerk; Smith & Kellogg, solicitors for complainants, McClelland block, Denver, Colo.

218 And afterwards and on, to wit, the 28 day of May, A. D. 1883, came again the said complainant by his solicitor as aforesaid, and filed in said court and in said cause his replication. And the said replication is in words and figures as follows, to wit:

In the Circuit Court of the United States, district of Colorado.

General Replication.

JOHN E. WHITE, agent,
against
JOSEPH R. CROW et al. } In equity.

The replication of John E. White, agent, to the answer of defendants herein.

The repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says: That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in
219 said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) SMITH & KELLOGG,
Solicitors for Complainant.

It is hereby consented that the above replication be filed.

(Signed) L. N. BUCK,
of Solicitors for Def'ts.

DISTRICT OF COLORADO, *ss.*

C. EDGAR SMITH, being sworn, says that he is the counsel of the complainant herein; that he has read the within replication and knows the contents thereof, and that the same is true, except as to those matters therein stated to be made on information and belief, and as to those matters he believes it to be true.

That the reason why this verification is not made by the complainant is because said complainant is a resident of the city, county and state of New York, and is absent from the district of Colorado, where deponent resides.

220 (Endorsed:) U. S. Circuit Court, dist. of Colorado; John E. White, agent, against Joseph R. Crow et al.; replication; filed May 28, 1883; (signed) Edward F. Bishop, clerk; Smith & Kellogg, solicitors for compl't, room 1 McClelland block, Denver, Colo.

And afterwards and on, to wit, the 8th day of June, A. D. 1883, the deposition of John B. Henslee, Joseph R. Crow, Smith P. Brown, Frank W. Owers, and Oliver H. Simons was opened, published, and filed in said court and in said cause.

And the depositions of the said John B. Henslee, Joseph R. Crow, Smith P. Brown, Frank W. Owers, and Oliver H. Simons are in words and figures as follows, to wit:

Circuit Court of the United States, district of Colorado.

JOHN E. WHITE, agent, *vs.* JOSEPH R. CROW et al. } Equity.

221 Depositions of sundry witnesses on the part of defendants in the above-entitled cause taken by and before me, Robert H. Buck, an examiner in chancery of said court, at Leadville, in the county of Lake, in said district of Colorado, beginning on the fifteenth day of May, in the year 1883, and thence continuing by adjournment from day to day until the 17th day of May in said year.

On this fifteenth day of May, A. D. 1883, at ten o'clock in the forenoon, I was attended by C. Edgar Smith, esquire, solicitor for said complainants, and also by L. N. Buck, esq., solicitor for said defendants; also by John B. Henslee, a witness of lawful age, produced by said defendants, who, being by me first duly cautioned and sworn on oath, deposed as follows on the part of said defendants:

My name is John B. Henslee; age, 38; residence, Leadville, Colorado; occupation, mining broker, and the John B. Henslee defendant in this action. Have no interest in this suit directly
222 or indirectly, nor in the subject-matter thereof.

Am acquainted with the Brittenstene Mining Company and its property. In 1881 and 1882 I was state agent for the company. I was a stockholder to the amount of upwards of 15,000 shares, of

which 10,000 about stood in my name, the balance not yet having been transferred to me on the books of the company.

During the year 1881, or a part of that year, up to the election in September, John E. White was president, W. H. James was vice president, and M. J. Drummond was secretary and treasurer. The directors were Richard J. Morrison, John E. White, M. J. Drummond, W. H. James, H. F. Brittenstene, John B. Henslee, and others whose names I do not remember. After the election in the fall of 1881 the following were the officers: Richard J. Morrison, president, Lewis B. Eddy was vice president, and M. J. Drummond was secretary and treasurer. The directors were Morrison, White, Eddy, Chandler, and others whom I do not remember. I resigned as director about that time. A short time after I was re-elected. A majority of the directors lived in New York and they held all their meetings there.

223 The officers and directors with whom I corresponded about the affairs of the company were John E. White, Lewis B. Eddy, M. J. Drummond, and R. J. Morrison. The bulk of my correspondence was with Mr. White and Mr. Eddy. I received no salary. They paid my office rent for a few months. That was all the compensation I ever received. I was induced to attend to the company's affairs by my being a large stockholder myself, and in order to enhance the value of my own stock and that of my friends who had purchased on my recommendation. During a part of 1881 work was prosecuted in the company's mines. Work was begun in Feb'y, 1881, and discontinued October, 1881. The debts of the company upon which suit was afterwards brought were contracted before the discontinuance of work, and the company was at that time notified of these debts. The bills were sent to the secretary and treasurer. At that time the company was indebted to me. The debt to me up to Jan'y 1, 1882, including my office rent up to that time and the interest on money that

224 I had advanced, amounted to between $1,500 and $1,600, as I remember. It was due me for money I had advanced to pay for labor and supplies at the mines, vouchers for which were sent to the secretary and treasurer of the company at New York. It also included $175 that I paid to Charles T. Litchfield to settle an attachment suit brought by him against the company. Prior to Jan'y 1, 1882, I notified the company that I had advanced this money for them, and requested payment from them. The debts due to Evans, Falkenan, Howe, and Robison were contracted before the discontinuance of work in October, 1881. I sent all bills for everything that was received while I had charge. I assigned my claim against the company to J. R. Crow, the Joseph R. Crow who is a defendant in this action. I know that said Crow has no interest in this action or in its subject-matter.

(Pl'ff objects as incompetent, said Crow being now present, and his evidence being the best possible evidence upon the subject inquired about.)

At the time of the assignment I was indebted to Mr. Crow in the sum of $2,200, borrowed money.

225 (Objected to as immaterial.)

The assignment was in partial payment of that debt. That assignment was bona fide and absolute. The first suit against the company after the Litchfield suit, was brought by Joseph R. Crow, about the 9th of January, 1882 Robison's suit was brought in January, 1882, after Crow's, I think. Evans' suit was brought in February, 1882; Howe's suit was, I think, brought about July, 1882.

(Pl'ff objects on the ground of incompetency, the record being the only proper evidence.)

These creditors had been threatening the company before the institution of their suits. I notified the company that they were about to institute suits. Propositions were made and promises of payment were made by the company to procure delay in bringing these suits. After judgment was obtained in the Crow, Robison, and Evans suits the company was notified of these judgments. I here produce and make a part of my deposition a letter from L. B. Eddy to myself, dated February 1, 1882, which is marked by the examiner Exhibit A.

226 Also a letter from L. B. Eddy to myself, dated Feb'y 14, 1882, which is marked by the examiner Exhibit B. Also letter from said Eddy to myself, dated Jan'y 14, 1882, which is marked by the examiner Exhibit C. Also letter from said Eddy to myself dated Jan'y 30, 1882, which is marked by the examiner Exhibit D.

(Objected to as immaterial and irrelevant.)

Interrogatory 1. State what authority was given you to procure a stay of execution on these judgments, what promises were made by you on behalf of the company to the judgment creditors, and what time, upon the strength of these promises, did you obtain a stay of these executions?

(Objected to as immaterial and irrelevant and because the best evidence should be produced in writing from the officers.)

A. I was requested by the officers of the company to get the creditors to delay suing out executions upon the statement that they were doing all in their power to raise the money, and the assurance that they believed that they would be successful in their efforts, and that they would pay the judgments as soon as possible. On

227 the strength of these promises I got all of them to delay several months. The property was advertised for sale under the Evans execution some time in May, 1882. On the request of Messrs. White and Eddy and the promise to pay part of the amount, I got the sale postponed till June 10th.

Int. 2. What proposals and efforts were made by the officers of the company to raise money in order to pay off these judgment debts?

(Objected to as irrelevant and incompetent for same reasons as above.)

A. There were two propositions, one to pay part cash if the cred-

itors could give an extension; second, to raise money by a mortgage on the property.

Int. 3. Please produce and file what letters you have from the officers of the company requesting you to obtain a stay of execution from these judgment creditors and making proposals to raise money to pay off these judgment debts.

A. I here produce and make a part of my deposition let-
228 ters from John E. White to myself, dated Feb'y 20, 1882, which is marked by the examiner Exhibit E; also letter of L. B. Eddy, vice president of the company, to myself, dated Feb'y 21, 1882, which is marked by the examiner Exhibit F; also letter from said Eddy to myself, dated March 6, 1882, which is marked by the examiner Exhibit G; also letter of said Eddy to myself, dated March 7, 1882, which is marked by the examiner Exhibit H; also letter of Richard J. Morrison, president of the company, to myself, dated March 14, 1882, which is marked by the examiner Exhibit I.

(Objected to as immaterial.)

The company did not comply with its promises to pay the judgments. I was present at the sale of the property of the company under the Crow judgment. I am acquainted the property of the company.

Int. 4. State how the mining claims of the company are located with reference to each other, and with reference to the mountains on which they are.

(Objected to because the only proper evidence to be produced should be in the form of a plat and survey.)

229 A. That is a hard question for me to answer. Several of them lie parallel to each other, and some of them intersect each other. I have always supposed that the Lilly and the Rebecca were cross-lodes. Most of the claims lie parallel or lengthwise with the mountain. The others cut it at right angles, or nearly so. There was a tunnel run from the base of the mountain to intersect and develop these claims. In my opinion, the property was valuable as a whole property.

The sheriff offered the claims singly and separately at first, according to my recollection, and receiving no bids, he then offered them *en masse*. They were struck off *en masse* to Joseph R. Crow.

I notified the company of the several sales of their property under these judgments and of the time allowed for redemption by the company under the laws of Colorado. There was a proposition made by circular to the stockholders to *to* raise money to redeem the property from these sales.

(Objected to—immaterial.)

230 I here produce one of these circulars signed by the direct-
ors of the company, and it is marked Exhibit K and made a part of my deposition.

(Objected to as irrelevant.)

In the statement of the indebtedness of the company, included in that circular, the amount of the Crow judgment is included under

the item of the amount due John B. Henslee for wages and supplies, $4,750. Howe's judgment is stated as a separate item. All the other judgment debts are included in that item, $4,750.

I was employed first by Dr. Simons, of Leadville, and by Nelson and Noel, of St. Louis, to buy up all the judgments and certificates of sale against the Brittenstene Mining Company. In pursuance of their instructions, I bought at different times all of these judgments. After I had bought some of them, and before I had bought them all, Mr. James Streeter, of Leadville, and William N. and James R. Loker joined this pool with Simons and Nelson and Noel for the purpose of buying up these judgments. I told these men at the time they bought them that the company or its grantee had the right to redeem within six months and any judg-
231 ment creditor within nine months from the date of sales; that if redeemed they would get their money back with interest & the benefit of any discount; that if not redeemed they would own the property; the certificates of sale were all redeemed before the time expired, except one, I believe; they were redeemed by John E. White, agent; William N. Loker was a large stockholder; James Streeter owned 1,300 shares; Wilson and Noel were both stockholders, I don't know to what extent; Dr. Simons and J. L. Loker were not stockholders to my knowledge; I purchased the Crow and Evans certificates of sale for this pool; I purchased the Robison judgment and the Falkenan judgment for these parties; the Falkenan judgment was assigned on the record to Dr. Simons alone, but it belonged to the whole pool according to their respective interests; these parties are now the only owners of the Crow certificate of sale.

I notified Mr. John E. White that the pool was formed here and was buying these certificates; I don't think I gave him the names of the parties.

232 (Objected to as secondary.)

At that time I invited Mr. White to join that pool and take a third or fourth interest in it; I had considerable correspondence with him on the subject; he said he would like to do it and would do it as soon as he got money; I don't know whether I have that letter of his or not; I can't produce it; I learned first that Mr. John E. White had bought the property of the company at the receiver's sale in New York on the 2d day of December, 1882; the telegram was dated New York, Dec. 1, and I received it on morning of Dec 2; I have produced the said telegram, and it is marked by the examiner Exhibit L and made a part of my deposition.

On the 2d day of December, 1882, Mr. Frank W. Owers, of Leadville, called upon me and inquired the amount of the judgment and certificates of sale due against the Brittenstene Mining Company, and said he was requested by Messrs. Ross & Coston, of Buena Vista, to ascertain the amount of this indebtedness, and whether any extension would be granted on it; I told him that it amounted to about $6,000, including the assessments; that I

represented the pool who owned this indebtedness
233 and that no extension of the time of redemption would be granted. Mr. Owers' inquiry of me was whether any extension of the time of redemption would be granted.

I made a proposition by telegraph to Mr. John E. White Dec. 8, 1882, by authority of Dr. Simons, in words about as follows: "If you will pay $800 assessments due next Saturday and give me a one-third interest I will extend the time on all the judgments four months." Mr. White answered by letter on Dec. 9, one day before the Evans certificate expired and 8 days before the Crow certificate expired. I here produce said letter, and it is marked by the examiner Exhibit M and made a part of my deposition.

On or about Dec. 7, 1882, Mr. C. Edgar Smith, of Denver, called upon me in my office. There was present at the interview Joseph R. Crow and Mr. Brown, whose initials I think are L. B. My recollection is that Mr. Smith stated to me that he had a telegram from Mr. White and that he was authorized to settle all valid claims against the Brittenstene company. Mr. Smith asked me the amount of the indebtedness against the company and the nature of it.
234 I told him the nature of it and that the amount approximated $6,000, including assessments. I showed Mr. Smith some of the certificates of sale which I had in my possession at that time, and told him the others were in St. Louis; that I could not give him the exact amount due. He then told me he would go to Buena Vista and examine the records of Chaffee county and see the dates of the sales and their amounts. I did not then show him the Crow certificate of sale. It was not here. My recollection is that I did then inform him of the time when the right of redemption would expire on the Crow, Evans, and Robinson certificates.

My recollection is that Mr. Smith asked me whether any extension would be granted of time to redeem the certificates of sale, and that I told him no extension would be granted.

I saw Mr. Smith after his return from Buena Vista, about Dec. 8, and he told me he had written Mr. White a full statement of the amounts due and when the time expired, as well as the dates of sale, and that he had telegraphed White to telegraph the money to redeem the Evans certificate, which expired Dec. 10. I had several
235 other interviews with Mr. Smith at different times, and he told me that the redemption of the certificate under the first sale—the Evans sale—gave him the right to redeem the certificates under subsequent sales at pleasure.

Mr. Smith told me that the Robison judgment was the first lien against the property, and that the redemption of the certificate under that sale would unquestionably give the right to redeem the others at any time, or that at any rate he would not run the risk of letting the Robinson certificate lapse. At the interview after Mr. Smith had returned from Buena Vista, he told me he had examined the records there.

I received a letter from Mr. Smith before Dec. 17, asking me what

was the least amount I would take for all the claims against the Brittenstene company, which letter I have produced, and it is marked by the examiner Exhibit N and made a part of my deposition.

My recollection is that we had a conversation in Mr. Priddy's office about Dec. 8. My recollection is that Mr. Smith asked me in that conversation what discount the owners would take for
236 immediate cash payment. On Dec. 8, 1882, or about that date, I made a proposition to Mr. Smith that if he would pay me the money that had been paid out for assessments by these parties, or deposit the same in bank, I would furnish him the vouchers therefor. My recollection is that I made him a similar proposition on the judgments or certificates of sale, but I am not so positive about this as about the other. He said he didn't wish to pay anything until the certificates were produced. Part of the certificates were in St. Louis at that time. I had no other interviews with Mr. Smith between the time of the expiration of the right of redemption under the Crow certificate, Dec. 17, and the time of the commencement of this suit, Feb'y 12, 1883. On the night of Dec. 29 I met Mr. C. Edgar Smith in Buena Vista, where and when he offered to pay the Crow certificate and all other judgments in full if I could receive the money. I told him I was instructed not to receive the money, as the time for the redemption under the Crow certificate had expired. I here produce a letter from Mr. Smith to myself, dated Jan'y 9, 1883, which is marked by the examiner Exhibit O and made
237 a part of my deposition; also a copy of the Crow certificate and assignment thereon, which is marked Exhibit P and made part of my deposition.

I received all the money paid to redeem under the Howe, Evans, and Robinson judgments. I did not receive the money paid on the Falkanan judgment. I paid out part of the money received for costs in this suit, and part of it to the owners in the pool.

I considered the value of property of the company in 1882 largely prospective. There was not much ore in sight. It had never paid expenses for working.

In pursuance of my duties as state agent of the company, I had the assessment work done on all the claims except one, for 1882, in the name of the company. The exception was the St. Louis. Also assessment work on the tunnel site. I advanced the money to pay for part of this work, part of which was refunded by the company itself and part by the plaintiff in this case.

And thereupon, on cross-examination, the said witness further testified as follows in response to cross-interrogatories to him propounded on the part of said complainants:

238 Cross-int. 1. Were you the only regularly appointed state agent for the company in Colorado?

A. I was. The company had two other managers, Edward R. Howe and Lieutenant Huston. I was all the time agent for the service of papers in the company.

x 2. What part of the time were you the manager?

A. From about February 1, 1881, to about July 1, 1881.

x 3. Were you the manager after Huston and Howe left?

A. No; Hamilton was left then in charge.

x 4. Did you never give Mr. Hamilton any orders?

A. I did. I gave him instructions by order of the company, I think, to do the assessment work on the tunnel for 1881. The assessments that were done in 1882 were done by my personal order in the name of the company, but not by order of the company.

239 x 5. You then considered yourself as authorized to order that assessment?

A. No, sir. The company was bankrupt, its property had been sold, and they did not order me to have the assessment work done for 1882. But I ordered the work done upon my own authority with a view of protecting the company in case they redeemed from the sheriff's sales.

x 6. You then considered yourself as acting for the company?

A. No, sir. I was not acting for the company, unless they redeemed.

x 7. When did the company first become embarrassed?

A. In October, 1881, or about that time.

x 8. Didn't you thereafter continue to act as the adviser of the company and its agent?

A. I continued to be the state agent of the company; yes, sir.

240 x 9. Were you not in constant correspondence with the officers and directors in New York from the time the company became embarrassed until the latter part of 1882?

A. I was in constant correspondence with them until about June, 1882, after which our correspondence was quite limited.

x 10. What was the purpose of the correspondence while it lasted?

A. The officers and directors of the company were proposing various schemes for extricating the company from its financial embarrassments.

x 11. Were you not co-operating with them to secure that end?

A. I was.

x 12. Did you ever notify them that you were acting in concert with other parties whom you call Western pool, to get title to the property in hostility to them, and if so, what is the date of that notice, and if it was a letter, will you produce the letter and make it a part of your answer?

241 A. I wrote to Messrs. White and Eddy during the year 1882 that a Western pool was formed for the purpose of buying up the Colorado judgments and certificates of sale against the Brittenstene property, and invited them to join the pool, telling them that if the property was redeemed within the time allowed by law they would get their money back with interest; if not redeemed, the pool would own the property; I can't give the exact date and I can't produce the letter, because I kept no copy of it, and the original has gone to its address; I cannot state the month when it was

written; my recollection is that I wrote them several letters on the subject; I was particularly friendly with Messrs. White and Eddy, and wished to see them protected.

x 13. Can you state whether it was in the first or last half of 1882?

A. My recollection is that it was in the first half, though I wouldn't be positive as to that.

x 14. Do you say you have had no correspondence with them with a view to redeeming the company's property after August 1882?

242 A. I can't say whether I did or not.

x 15. When did you first enter into arrangements with these defendants, called the Western pool?

A. I was employed first by Nelson & Noel in June, 1882, I believe, to buy up the judgments and certificates of sale against the Brittenstene Mining Company.

x 16. Was that employment by letter or verbal?

A. It was by letter and telegrams; I was also employed by Dr. O. H. Simons, one of the pool, about the same time.

x 17. Will you produce letters from Nelson & Moel bearing upon this matter of your employment by them?

A. I can't do it without a great deal of trouble and looking over several hundred letters; I had the first telegrams from them to buy the property at the Evans sale; it was advertised to be sold in May; they authorized me to bid it in for them at $1,500 at that sale, and draw on them for the money; I am unable to find that tele-

243 gram after searching.

x 18. Have you made search for Nelson and Noel's correspondence?

A. I have, and find some letters. I have produced a letter from them dated June 6, 1882, which is marked by the examiner Exhibit Q and made a part of my deposition. This is the date of the earliest letter that I can produce. I also produce letters and two telegrams from them, dated Aug. 12, 1882, Nov. 10, 1882, Nov. 21, 1882, Dec. 5, 1882, Dec. 15, 1882, Dec. 22, 1882, Dec. 23, 1882, Dec. 25, 1882, Dec. 26, 1882, Dec. 30, 1882, Jan'y 16, 1883, Feb'y 12, 1883, Feb'y 13, 1883, Feb'y 14, 1883, and March 9, 1883, which are marked respectively by the examiner Exhibit R, S, T, U, V, W, X, Y, Z, A 1, B 2, C 3, D 4, E 5, and F 6, and made a part of my deposition.

x 19. What draft was referred to in the letter of June 6 to you?

A. It was my draft that they authorized me to draw on them. I presume it was the first one I drew on them, which was for $1,000.

244 x 20. How was it to be applied?

A. It was to be applied partly to the payment of the Evans judgment, and partly to other judgments. I don't know in

what proportion to each one, as I didn't buy all the judgments at once.

x 21. Can't you state more exactly?

A. I can not.

x 22. When did you make your arrangement with Nelson & Noel, and what was it?

A. About June 1, 1882, they proposed to join with others in buying up the judgments and certificates of sale against the Brittenstene company, and this $1,000 draft was the first payment they made under that arrangement.

x 23. Was that arrangement made with you, and by letter?

A. I have answered that question before. I told you they sent me a telegram which I cannot find. I don't keep all my let-
245 ters and telegrams. I had a good many from them and from White and Eddy, which I wish I had now.

x 24. None of these letters show the terms of your arrangement with Nelson & Noel. Can you produce anything showing those terms, and if not, will you state what they were?

A. I cannot produce anything showing the terms. The interest that they were to take was changed several times. You will have to find out from one of the owners in the pool what their respective interests are now.

x 25. In the last letter which you produce, March 9, 1883, from Nelson & Noel, they say they hope to hear something favorable in the Brittenstene matter from you soon. If you know nothing about this arrangement, and we must look to other parties for the information, why do Noel & Nelson look to you?

A. That letter refers to their suit and they wanted to know how it was going to terminate, and they are relying upon me to keep them posted as to the progress of the suit. That's all.

246 x 26. Do you pretend to say that you have been in correspondence with them since June 6, 1882, making drafts on them, purchasing judgments for them, and that you don't know what the arrangement was or is in regard to their interest?

A. I answered a few minutes ago that their interests were changed several times, and there is another party in St. Louis that owns, as I am informed, a part of the interest with them, and I can't possibly state what their interests are at present. I know the pool owns it all.

x 27. Was the telegram which you say you can't find the first communication you had from Nelson & Noel in regard to this matter?

A. It was.

x 28. What were the contents of that telegram as you remember them?

A. To bid in the Brittenstene property at the Evans sale which was advertised to take place in May, at $1,500, and draw on them for the money. I think they said also on condition that that sale carried all the title.

247 x 29. Had you never before given them any information about these judgments, or had any correspondence with them?

A. No; they heard of the sale in St. Louis, and telegraphed me to bid it in at the Evans sale, as stated in the last answer above. I never had one word of correspondence with them on the subject previous to that time.

x 30. Do you not now know what their interest is in this pool?

A. I have answered that twice "no" before. I now answer "no" again, because there are other parties interested with them, and I don't know what division they have made.

x 31. Have they not left these matters entirely to you from the beginning; that is, their interest in this pool and in this case?

A. If you will explain to me in what way you mean I will try to answer.

x 32. I leave it as it is, to answer or not, as you please.

248 A. I don't hesitate to answer. They have relied upon my judgment and advice. When I wrote them that Mr. White had failed to redeem the Crow certificate they wrote or telegraphed me to hold the property if possible. That telegram is filed in evidence.

x 33. Did they not likewise depend solely on you prior to the 17th day of December, 1882, and were you not acting with and for them from the time you began to purchase these judgments until now to get control of the property and title to it?

A. I have acted for them from the time the pool purchased the judgments and certificates until the present time. I notified them when they bought the certificates that the company or its grantee had the right to redeem within six months, and any judgment creditor within nine months; that if the property was redeemed they would get their money back with interest; that if not redeemed the pool would own the property; that when Mr. Smith redeemed the Evans certificate on the 10th of Dec. I thought the other certificates would be redeemed by him in their order, whereat they

249 expressed disgust and disappointment that they would simply get their money back and interest, instead of getting the property, as they had hoped. I replied to them that it couldn't be helped; that Mr. White, as grantee of the company, had the right to redeem, and they would have to receive the money if paid within the time.

x 34. What did you mean when you said to them that the pool could come in in case of non-redemption?

A. I meant that the pool that owned the sheriff's certificates woul l own the property if the time elapsed without redemption. I couldn't mean anything else.

x 35. Is that all the explanation you can give of the pool?

A. Yes, that's all. I don't see how it could mean anything more.

x 36. Do you swear that you don't know what Nelson & Noel's

interest is to be in case Mr. White fails to retain the title to
250 the property?

A. I know that their interest is to be either 17-33 or 5-12, including what others own with them. How it is to be divided I am unable to state. That's all I can say about it.

x 37. Has not all their business been done by you?

A. It has.

x 38. While you were thus acting for Nelson & Noel you were also in correspondence with the directors of the Brittenstene company in New York, were you not? If yea, for what purpose?

A. I was, and for the purpose of assisting them in their schemes and efforts to redeem the property.

x 39. How could you assist and co-operate with them and at the same time act as adviser and agent for Nelson & Noel in hostility to them?

A. Nelson & Noel and the pool were not in hostility to the company, but stood ready at all times to receive the money due
251 on the certificates, provided the same was paid by the company before the time for redemption expired. I was anxious for the benefit of myself, as a large stockholder, as well as for the benefit of my friends who were stockholders, to see the company redeem the property, and here I heartily co-operated with them to this end. As most of the pool were stockholders in common with myself, I claim that I acted in good faith, and that there was no insincerity in my action.

x 40. That is, you meant to hold the trump card whichever party won? Pretending to aid and advise with the directors in New York, you were at the same time purchasing up all the claims to be used against them?

A. I don't know what you mean by trump card—I don't play. The company was no more injured by this pool owning the claims against it than it would have been if those claims had remained in the hands of the original owners; I would have been benefited if the property had been redeemed by the company, and I offered
252 them every facility for redeeming it, urged them to do so, and co-operated with them in their efforts to raise money for that purpose.

x 41. Have you any copies of any letters or telegrams sent to Nelson & Noel from June, 1881, to March, 1883?

A. I have copies of some letters but no copies of telegrams sent them in that time.

x 42. Will you produce them?

A. I here produce my letter-book.

x 43. Please turn to the first letter written to them and state its contents or read it.

A. The following is the letter to which I refer:

"LEADVILLE, COLO., *July* 31, 1882.

Messrs. NELSON and NOEL, St. Louis:

GENTLEMEN: Parties here owning judgments *vs.* the Brittenstene

mines to amount of $1,632 more want to pool issues with us, or parties owing it will redeem our claims. You can buy the $1,632 for $1,480, and this will carry certificate of sale of the personal property (bran new machinery,) that cost the company $3,000 last fall,
253 and also the fund certificate of sale of the mines. The claims belong to two parties. There are two later small judgments, but the owners are not able to buy, and I apprehend no trouble from them. They could be bought very cheap now, if thought advisable. If you wish to contribute 17-33 of the $1,480, telegraph me on receipt of this. I have promised to let Mr. Streeter, one of the owners of the Clarendon Hotel here, in for a small interest. He owns 1,300 shares of stock, that cost him about $1.60. We bought none of the machinery or tools at our sale. We will have possession at once, but will do no work except $100 work (legal assessment) on tunnel site. I think it would be best to keep the machinery if we buy it; at least, not sell it now, though I could get $1,500 to $2,000 cash for it. If you telegraph, just authorize draft for $765, and it will cover exchange.

Yours truly, JOHN B. HENSLEE."

I will add that the proposition contained in this letter was not accepted by them, at any rate at that time, and that this transaction was never consummated.

x 44. Was the amount of the draft you ask authority to
254 draw their proportion of 17-33?

A. It would have been if they had gone in.

x 45. Now turn to your next letter to them, and read it.

A. This is the next letter I sent them:

"LEADVILLE, *Aug.* 31, 1882.

Messrs. NELSON and NOEL, St. Louis, Mo.

GENTLEMEN: Your *your* two favors, of 26th and 28th, received. You are now out $2,404.71 and interest. If you will carry them on until Oct. 1 I will take 4-33 at the rate of $2,500 for the 17-33, equal $588. Advise if accepted. Don't see how I can pay it sooner; but can pay it then sure.

Yours truly, JOHN B. HENSLEE."

I will add that this proposition was accepted, (and there is a contract to carry it out.)

x 46. Is that contract in writing?

A. Yes; but I haven't got it.

x 47. Where is it?

A. In St. Louis.

x 48. Have you no copy of it?
255 A. I have not.

x 49. What is the date of your next letter to them?

A. This is my next letter to them:

LEADVILLE, *Dec.* 21, 1882.

Messrs. NELSON & NOEL, St. Louis.

GENTLEMEN: Enclosed find draft drawn by the City Bank of Leadville on Commercial National Bank, Chicago, as follows: No. 6,243 for $79.64, return of the two assessments paid by you; No. 6,244, for $540.90, being 17-33 of $1,050 on the first certificate redeemed. You are mistaken about paying the whole of this. Crow's certificate for over $1,700 was the first one I bought, and I bought this one also about the same time, and only drew for the money as I needed it. Now Crow's certificate expired last Saturday, as against the company or its grantees, and Mr. White failed to redeem it. I think we have got the advantage, and I have notified the sheriff of Chaffee county not to receive the money if tendered now. Of course we get the benefit of the $1,050 certificate redeemed by White, also the $100 assessment paid back to us by him, and also the $600 that he has paid the workmen for the other six assessments that we
256 expected to have to pay. And now I think it is about time for you to quit kicking. I have managed the business as well as you or anybody else could. White wired me that I must extend time of redemption, as he could redeem and leave me out. I did not believe he had the money and declined to extend. He redeemed on first and failed on second. I knew nothing about receiver's sale in New York, or I should have bought the equity of the company's redemption which White bought. Although Evans sold the property first, Crow's judgment was first rendered and the transcript was filed in Chaffee county, thus making it a prior lien. Crow also sold, and his certificate (time of redemption) expired last Saturday and is still unpaid. If this is satisfactory, all right. If not, say so now, and you can have all your money back with ten per cent. interest. But please don't touch me up in every letter.

I have done what I thought was best, and have devoted much time and labor to in.

Yours truly, JOHN B. HENSLEE."

x 50. Please produce your next letter to them.

A. The following is the next:

257 "LEADVILLE, *Dec.* 30, 1882.

"Messrs. NELSON & NOEL, St. Louis, Mo.

"GENTLEMEN: I was summoned to Buena Vista last night to meet Mr. Smith, Mr. White's attorney. I went and had a long talk with him. He wanted to pay me the money on all our claims, but I declined to receive it. He claims that when he redeemed the certificate under the first sale, although said certificate was for the second judgment, it gave him the right to redeem all certificate even of prior judgments at his pleasure.

"My attorneys claim that each certificate must be redeemed as it matures or before, otherwise the title passes to the purchaser, when that sale, so far as the judgment debtor or his grantee is concerned. After time of redemption lapses under such sale only a judgment

creditor whose judgment was of record before time of redemption expired can redeem. If you wish to consult General Henderson on the point, state the case to him in this way: A, B, C and D each have judgment against E, these judgments being in the order named. B gets out his execution first and has the property sold by the sheriff, the purchaser of course buying subject to A's prior lien. Then A has the property sold by sheriff and bids it in as though no
258 sale had ever been made by B. E's grantee then comes in at the end of six months and redeems certificate under B's sale, but he (E's grantee) lets the six months lapse and fails to redeem certificate under A's sale. Now who owns the property? Have not E and his grantees lost all right of redemption, and does not A now own the property absolutely, so far as they are concerned? I find that a judgment has been rendered Dec. 10 against the company, in favor of Gallagher for Morrison's claim, amounting to $7,053. If our claim holds, then Morrison has the right to redeem from us as a judgment creditor, and any subsequent judgments are void as against the property.

"If White's claim holds, then Gallagher and Morrison can get out executions and sell the property again, and White would be compelled to pay it to protect his title, and that would reopen the time for any other eastern creditors to come in. The Gallagher-Morrison judgment was irregularly obtained and might be set aside, or they restrained from operating under it. Mr. M. J. Drummond, the secretary and treasurer, confessed judgment on it against the company in Pittsburg Nov. 27. There is no record to show that he was authorized by the board of directors. Besides the company
259 did not rightfully owe Morrison the money.

"Yours truly, JOHN B. HENSLEE."

That is the last one that I have got copied to date.

x 52. Have you written other letters to Nelson & Noel concerning this matter of which you have no copies?

A. I have, a good many of them.

x 53. Your interest in this pool, then, is what was stated in the letter contained in the answer to the 45th interrogatory, viz., 4-33?

A. I have no personal interest in it at present.

x 54. Then why did you say in that answer that "this proposition was accepted, and there is a contract to carry it out"?

A. That is true, and that interest is to be transferred to one of the other parties in the pool.

x 55. Who is this party?

260 A. Mr. Loker.

x 56. When did you arrange to make that transfer to Mr. Loker?

A. Upon his arrival here. He will be here some time this week.

x 57. My question was, when did you arrange to make that transfer to Mr. Loker?

A. I gave Mr. Loker a statement several months ago that he was to have the interest in the property.

x 58. What kind of a statement, and when did you give it?

A. In writing, in the latter part of 1882; I don't remember the month. It was before a certificate was redeemed.

x 59. What were the terms of that agreement?

A. That he was to pay his proportion of the cost of the judgments and certificates with the other members of the pool.

261 x 60. Was there anything else in that statement; if so, state what?

A. Yes, sir; that he was to have a deed for his part of it if the property was not redeemed, or have his money refunded if it was redeemed.

x 61. What money has he advanced?

A. He has advanced a little over $600.00.

x 62. When did he advance it and for what purpose?

A. At the time the statement was given to him by me, and for the purpose of paying for his interest in those judgments and certificates.

x 63. Have you a copy of that statement?

A. I have not.

x 64. How did he pay you, in money or check?

A. By check on St. Louis.

262 x 65. Have you no memorandum showing when you received those checks?

A. I have not.

x 66. Can you give the month?

A. I cannot.

x 67. What did you do with the money?

A. I used it for the purposes for which it was paid, that is, to pay for his interest in those claims.

x 68. What was it agreed that his interest should be?

A. One-eighth; it may be a fraction less or more when the members of the pool meet for final adjustment.

x 69. Have you anything to show that he accepted the offer you made in what you call a statement?

A. I have no evieence on hand. The evidence was that 263 he paid me the money and took the receipt or statement.

x 70. Is that all that you can definitely state in reference to this matter?

A. That is all that I remember. I will add that he paid me his part of the assessments, which I refunded to him when Mr. Smith paid the assessments back to this pool.

x 71. Do you swear that you have no understanding or agreement with him by which this interest is to revert to you?

A. I do.

x 72. What compensation are you to have for the time and labor you have spent in this matter?

A. There is no compensation agreed upon.

x 73. You expect, however, to be reimbursed in some way, do you not?

A. I expected to make something by handling or selling this property for the pool if they held it. There has been some
264 general and indefinite statements by members of the pool that I would be paid for my services, but no amount named on either side.

x 74. And no interest named?

A. No, sir.

x 75. You expect, however, to make a considerable amount of money, do you not, in case Mr. White fails to sustain his title?

A. I hope to make something if the pool holds it, but I have always advised both sides to compromise, and preferred to take my chances for profit in aiding both of them to handle the property.

x 76. There is nothing in your letters to Nelson & Noel herein produced which shows that you ever advised them to compromise? When and how did you advise them to so do?

A. I advised them by letter, and I think I have just filed a letter from them in reply to mine, saying in substance that they were willing to compromise if I advised it.

265 x 77. Will you turn to and identify that letter?

A. It is their letter dated Feb'y 12, 1882, in reply to mine of Feb'y 8, marked Exhibit C 3; I also had a conversation with Dr. Simons about it.

x 78. What have you advised them since you received that letter?

A. I have advised all members of the pool that notwithstanding the fact that their lawyers thought they had a good case, I thought it would be best and cheapest for all parties concerned to make a fair and equitable compromise if possible; I told them also that I had had some talk with Mr. Smith on the subject, and that he said he thought himself it would be best; that he would rather charge his client a fee for keeping him out of litigation than for drawing him into it; but no satisfactory proposition was ever submitted.

x 79. For what purpose did you assign your claim or pretend to assign it to Mr. Crow?

A. I was indebted to Mr. Crow $2,200 at the time of the
266 assignment, and I assigned it in partial payment of that debt.

x 80. That has been before stated; but what was your plan in suing the company?

A. I had no plan.

x 81. You were conversant with the condition of the company and its embarrassments?

A. I was.

x 82. Did you not advise Mr. Crow to bring the suit at once?

A. I don't remember.

x 83. The suit was brought, was it not, immediately after the assignment?

A. It was; soon after the assignment.

x 84. The summons was served upon you as the state agent of the Brittenstene company, was it not?

267 (Objected to as secondary.)

A. It was.

x 85. Did you notify any officer of the company of the service of that summons at the time?

A. I don't think I did. I had notified them previously that suit would be brought if the account was not paid.

x 86. Whom did you notify, and when?

A. John E. White, Lewis B. Eddy, Richard J. Morrison, and M. J. Drummond, several times between November, 1881, and Dec. 31, 1881.

x 87. Have you any letters showing that you gave them this notice?

A. I have not.

268 x 88. Who did you say would bring suit?

A. I don't know that I stated. I told them that I owed money, and as I had advanced them money to pay debts for them, and carried it several months, I thought they ought to pay it.

x 89. Why were you in such a hurry to have judgment entered, and why did you go into court four or five days after the summons on you and have the judgment entered up against the company, and what authority, if any, had you to do it?

A. There were two reasons for the haste. One was that it would save expense, the other was that there were attachments threatened by other parties, and as Mr. Crow had befriended me I did not want needlessly to give other parties, to whom I was under no obligations, advantage over him. I supposed I had full authority, as state agent, to do what I did. I went into court and stated that I knew the claim to be valid and just, and that there was no equitable defense against it.

269 x 90. Your plan then was to get ahead of other creditors in order to secure this claim?

A. My plan was, if I had any plan, my purpose was to avoid letting other creditors get an undue advantage over Mr. Crow, to whom I was indebted, and to whom I had assigned the claim; other creditors were threatening attachments and Mr. Crow had not attached.

x 91. Then he was advised to attach by you?

A. He was not, and did not attach.

x 92. He was advised then to make haste to get his judgment entered in Chaffee county.

A. I do not remember that I advised him on that subject, and in point of fact he did not file his transcript of judgment in Chaffee county for several days after judgment had been entered in Lake county.

x 93. Didn't you attend to this whole business for him?

270 A. I did not; his lawyers attended to the matter after the assignment of the claim.

x 94. Did you not consult with the lawyer?

A. I talked with the lawyer at the time he instituted the suit, and when I went into court to make my statement concerning it.

x 95. Who paid the lawyers, and who were the lawyers?

A. The lawyers were Danford & Early; I think Mr. Crow paid them part and I paid them part.

x 96. How much did you pay them?

A. My recollection is that Crow and I each paid them ten dollars.

x 97. You also gave the instructions to the sheriff in regard to the sale under this judgment?

A. After a consultation with Mr. Crow I went to Buena
271 Vista and bid in the property for him for the full amount of his claim, or told the sheriff how I wanted it sold.

x 98. You directed him also how to make out the certificate?

A. I don't think I did.

x 99. Then you think the sheriff, in so testifying, is mistaken?

A. I think so, but I might be mistaken myself. That is my recollection.

x 100. Then you, thereafter, had full charge and control of that certificate?

A. I did, after it was assigned.

x 101. You have considered yourself as having authority to dispose of these certificates ever since the sales were made, have you not?

A. Ever since I agreed with the owners upon the price at which they could be purchased.

272 x 102. When was that?

A. At different dates during the summer of 1882. It is impossible to give the dates.

x 103. On Dec. 7 or 8 you have said that you sent a telegram to Mr. White offering to extend the time for paying if he would give you $\frac{1}{3}$ interest in the property; that is, by paying $800 assessment. You had authority to make that offer?

A. Yes, I had.

x 104. Have you the same authority and control over these matters now that you had then, and if not, why not, and when did it cease, and how?

A. My authority then was derived from Dr. O. H. Simons, who was an owner in the pool, and I took it for granted that the other members of the pool would acquiesce in this proposition, because it would be more to their interests to do so than to simply
273 receive their money back with interest. I have no such authority now, but could quickly get it by telegraph, if necessary.

x 105. How do you reconsile your previous statement, that in the year 1882 you were acting in concert and harmony with Mr. White and other directors in New York with a view to extricating the company from its embarrassments and to protect the company in its right of redemption, with the terms of the offer made in that telegram?

A. I knew that the company's property had been deeded to a re-

ceiver and their right of redemption had been sold by said receiver, so that there was no chance left for the company to redeem. The company itself had joined in the deed to John E. White as agent.

x 106. Do you pretend to claim that you formed no alliance hostile to the company until its right of redemption was sold?

A. I do, for it was manifestly to my interest to have the company redeem if possible.

274 x 107. Did you not state to Smith, on the 7th or 8th day of Dec., that you hoped Mr. White would not redeem?

A. I think very likely I did, because Mr. White was not redeeming for the company but for himself.

x 108. And you were working for yourself from the time you had the Crow judgment entered all along, were you not?

A. As I have stated before, I expected to derive a profit by handling this property for the pool in case it was not redeemed by the company, but I was always willing and anxious that Messrs. White and Eddy should join this pool and share any benefits that might accrue to it through the failure of the company to redeem.

x 109. Have you copies of any letters written to any officers of the company in the year 1881, and if so, will you produce them?

A. I have. On examination, however, I find I have only one, dated Dec. 2, which I now tear out of my letter book and

275 produce, and it is marked by the examiner Exhibit G 7 and made a part of my deposition.

x 110. How many judgments and certificates did you purchase? State names, dates, and amounts, and what you paid.

A. I cannot give the dates. They were:

Robison,	486	Paid	$466	
J. R. Crow,	1,718	"	1,718	
Edw. R. Howe,	566	"	250	
Falkenan,	132	"	66	
Evans,	2,049	"	1,165	& costs
			$4,665	

(Defendant objects on the ground that what he paid is immaterial and irrelevant.)

x 110½. Do you remember any conversation at any of Smith's conferences with you in regard to the Robinson judgment and its relation to the others?

A. I do.

x 111. State the purport if you can, and the dates.

276 A. I can only state the dates approximately. I had no conversation with him before the time for redemption expired, at which time he stated that the Robison judgment was the first lien against the property because it was an attachment suit. The attachment was levied about the 13th of January, whereas the transcript of the Crow judgment was not recorded in Chaffee county until the 17th of January. The fact was that the Robison attachment was not recorded in Chaffee county until January 20.

x 112. Was it not your opinion at that time and did you not so assume that the Robison was senior?

A. It was my opinion, but formed on hearsay. I had not examined the record.

x 113. You stated in your direct examination that you thought this property was valuable only prospectively. Have you not from the time of the organization of this company, and through the year 1882, claimed and represented to the officers and directors in New York that the property was of very great value?

277 A. From the organization of the company up to the middle of the year 1882 I did think, and represent to the officers of the company that I considered, the property valuable. My opinion was based largely up to that time on an exaggerated report of its value by George Daly, in whom I had great confidence, and also upon the general reputation of the property, and the marvelous statements made about it by Brittenstene and others. But upon attaining a better knowledge of the value of a mine myself, and the careful examination of the Brittenstene mines, I became convinced that I had been deceived, and that the value of the property was almost wholly prospective.

x 114. Then since you have been at work for the pool you haven't had much of an opinion of the property?

A. No, sir; I have not, and Dr. Simons, one of the members of the pool, will tell you that I have so represented to him.

278 x 115. You were paid by Mr. Smith $200 and over some time in December for two assessments. Had those assessments been expended by you personally or another?

A. My recollection now is that one of them had been paid by this pool, and that the other had been partly paid by myself, which I subsequently paid in full.

x 116. When you received that money from Mr. White, through Smith, you intended at the same time to put every obstruction in Mr. White's way towards getting title?

A. I did not so intend and did not do it; on the contrary, I offered him every facility for redemption.

x 117. What then did you mean in the letter to Nelson & Noel, herein copied in answer to the 50th x-interrogatory, when you say: "Of course we get the benefit of the $1,050 certificate redeemed by White; also the $200 assessment paid back to us by him, and also the $600 he has paid the workmen for the other six assessments that we expected to pay"?

279 A. That letter was written after Mr. White had let the time of redemption elapse. Every facility was offered him to redeem until the sheriff's certificate expired. I don't see the inconsistency there.

x 118. Your idea then is that it was equitable and just that Mr. White should put his money in there for the benefit of your pool and then be scooped?

A. As I owned no interest in the certificates I had nothing what-

ever to do with questions of equity, but was bound by the instructions of the pool to hold it for them according to law. Mr. White never manifested any disposition to deal with others on the score of equity that I am aware of; hence the pool felt disposed to keep all the law would give them.

Adjourned to May 17th, 9.30 a. m.

May 17, 1882, 9.30 a. m., resumed.

x 119. What do you mean in your last answer when you say you owned no interest in the certificates?

280 A. I mean what I say; that I had no personal interest; that I owned no personal interest in the certificates.

x 120. What do you mean then when you say in the letter written to Nelson & Noel, copied in your answer to the 49th x-interrogatory, when you tell them that White has paid certain amounts "that we expected to have to pay"?

A. I mean that I was acting as the agent of the pool at that time, and hence used the pronoun "we," but I owned no personal pecuniary interest then in the certificates that were redeemed or in the one that was not redeemed.

x 121. In the first conference you had with Smith, how positive are you that he asked you for an extension of time to pay the Brittenstene claims?

A. I am not absolutely positive, though my recollection is that he asked me if I had not been called upon by Ross & Coston with a request for an extension, and that I told him that I had, and

281 that I had refused it, and that he also asked me whether the extension would be granted. That is my recollection.

x 122. Do you remember that Smith showed you a telegram from White instructing Smith to meet Ross & Coston and Henslee at Windsor Hotel, Leadville, and that Smith asked you who and where Ross & Coston were to be found?

A. Mr. Smith showed me no telegram. He may have asked me who Ross & Coston were; I don't remember, nor do I remember whether he asked me where they were to be found. If he did I told him.

x 123. Do you remember that Smith told you that he had been sent here for the purpose of settling the Brittenstene indebtedness and wished all the information you could give him?

A. My recollection is that he told me that he had been sent here for the purpose of settling the Brittenstene indebtedness if an extension was refused. He did ask me for a statement of the

282 indebtedness, which I gave him as accurately as possible on the data then in my possession, and this was approximately correct in every particular.

x 124. If this was correct in every particular, how did it happen that in the statement you then gave Mr. Smith you included a charge

of $800 for assessments, when in truth and in fact only $200 had been paid?

A. I distinctly told Mr. Smith, and also had informed Mr. White, the complainant herein, that $600 of this amount was for assessments that were then being worked, and which I had agreed to pay for about the 10th of December. I told Mr. Smith that if he paid that amount, the $600, I would furnish him with the workmen's affidavits that the work had been performed.

x 125. Did you not ask Smith to pay you the $800, and did not Smith ask you to produce the vouchers in the shape of affidavits of labor for the same, and did you not search in your drawers for them and then tell Mr. Smith that you only had two of the affida-
283 vits, which had been mislaid; that you expected the other six that night of the next day when you said the work would be finished, and that if Smith would pay you the money you would surely furnish him with these two as soon as they could be found, and the other six when they arrived?

A. I did not claim to have but two of the affidavits. After searching for those I failed to find them. I then told Mr. Smith that if he would pay me the $200, or deposit it in bank, I would furnish them to him as soon as I could find them. He declined this proposition. I think I found these two affidavits the next day and drew on him for the money with the affidavits attached, which draft he paid. I think I also made him a proposition to pay me $600 or deposit same in bank, I agreeing to send him the affidavits as soon as received from the men who had done the work. This he also declined, and paid Mr. Hamilton for the work himself.

x 126. Why did you demand from Smith $800 when only $700 had been incurred for assessments?

284 A. Because the price for the annual assessment for a claim was $100, and if I got that work done for less than $100, there was no reason why I should accept a less amount from an individual to whom I was under no obligations. Besides I had obligated myself to pay $30 expense incurred for the benefit of the company for cleaning out the Quincy shaft, and had also paid out more than $20 expense in preparing the property for an examination by Messrs. Ryan & Morrison, for the benefit of the company. I told Mr. Smith this, and I subsequently told him that I had contracted to have the assessment work done on the six claims for less than $100 per claim, and I knew that Mr. Smith did not pay Mr. Hamilton $600 for the annual assessment on the six claims.

x 127. Do you pretend to say that you contracted with Hamilton to work six assessments when you and Mr. Hamilton only knew of five?

(Defendants object to all questions relating to the assessment work as immaterial and irrelevant.)

285 A. I did contract with Mr. Hamilton to do the assessment work on six claims if he could find the St. Louis lode.

Whether he had found it or not I had not been advised at the time of my conference with Mr. Smith.

x 128. Did you not about that time write a letter to Mr. Hamilton in which you told him that he must look to Mr. White for his pay; that you had no further interest in the property?

A. I don't remember. I may have written him such a letter because Mr. Smith had redeemed the first certificate and told me that he was going to pay the assessments to Mr. Hamilton and redeem the other certificates in their order, and I expected that he would redeem them, because I thought he was too good a lawyer to let any of them lapse.

x 129. Did you not ask Smith at that first conference to pay you all of the claims, and did Smith not tell you he would pay any for which you could show proper assignments, as vouchers for his protection?

286 A. I think I did ask him to pay me all of the claims or deposit the money in bank, for the pool considered that he had the legal right to redeem at that time. I also told him that if he would pay or deposit the money I would guarantee to furnish all the certificates properly assigned to him; that I had paid out thousands of dollars for Mr. White without any bond, and that Mr. White knew that I would do what I agreed to. Mr. Smith told me that he could deposit the money if he desired with the clerk of the court, or sheriff. I told him that I knew he had the right to do it and might do it if he wished.

x 130. Please explain how Smith could have told you on the 8th of December that he had examined the records, when you knew that he came directly from Denver here and had no knowledge or information about this matter except what he derived from you.

A. My recollection is that Mr. Smith was here first on the 7th of December. It was after his return from Buena Vista that he told me he had examined the records.

287 x 131. You are not sure, then, of the date?

A. I am quite positive in my recollection.

x 132. In your answer to the 126th x-interrogatory, you say you had incurred $30 for the benefit of the company and $20 in preparing the property for an examination by Mr.'s Ryan & Morrison. Explain about that.

(Objected to as immaterial and irrelevant.)

A. Mr. Morrison, the president of the company, telegraphed me to have the Quincy shaft cleaned out and the mines prepared for inspection by Mr. Ryan, and requested me to meet Ryan there and show them to him.

x 133. At what date was that, and have you that telegram; if so, please produce it?

A. It was in Oct. or Nov., 1882; I don't think I have the telegram; can't say positively.

x 134. Were you not then in correspondence with Mr.

288 Morrison relative to a scheme by which you and he were to get title to the property for your mutual benefit?

(Objected to as immaterial and not relevant to the issues in this action.)

A. No. The scheme of Mr. Morrison was to get Mr. Ryan and his friends to pay $50,000 cash as a development fund, and for the purpose of paying off the old debts, in order to benefit all the stockholders. The only scheme I know of to deprive the stockholders of the property is the one put up by Mr. White and his present associates, whoever they are.

x 135. You do not, then, consider your scheme with the western pool tainted with that odium?

A. I have no scheme with the western pool.

x 136. Have you any letters from Mr. Morrison in the last half of the year 1882, or copies of any letters to him; if so, will you produce them?

(Defendant objects to the production of this correspondence as immaterial to the issue.)

289 A. I don't think I have any copies of letters sent to him, but I have letters received from him, which I will very cheerfully produce. I here produce one from him, dated Oct. 22, 1882, the only one I am able to find. It is marked by the examiner Exhibit H 8, and made a part of my deposition.

x 137. Have you copies of no letters written to him about that time?

A. I have not; I looked yesterday for copies of letters written to officers of the company, and gave you all I had.

x 138. Do you swear that you and Mr. Morrison had no other and no private plan for reorganization than that contained in this letter?

(Objected to as immaterial and irrelevant.)

A. I do.

x 139. And none was ever suggested by one to the other; that you swear, also?

(Objected to as last above.)

A. I swear that we had no other plan.

290 x 140. That was not my question—whether you had a plan?

A. That was your question; I so understood it.

x 141. The question was: "And none was ever suggested by one to the other; that you swear, also?"

A. Since the time for redemption by the company expired I received a telegram from Mr. Morrison asking me if I would assign to him my judgment against the company, provided he would agree to pay me the amount of money on it if he was outbid at the sale, or I to have an interest in the property if he became the owner. I replied to that telegram that I had no judgment against the company.

(Defendant objects to question and answer as immaterial and irrelevant.)

x 142. My question referred to the latter part of 1882. Will you answer it or not?

(Objected to as immaterial and irrelevant, and as already answered.)

291 A. Certainly I will answer it; I will swear that there were no suggestions whatever of plan of reorganization between Mr. Morrison and myself that I remember of, other than as before stated.

x 143. Mr. Crow says in his examination that you kept the account with him; can you produce that account?

(Defendant objects until witness is shown when Mr. Crow so testified, and what he said.)

(Here witness is shown witness Crow's answer to the 63 x-interrogatory of his deposition and answer.)

A. I have no written account; my memory is mighty good on it though; no written account further than what has been shown.

And thereupon, on re-direct examination, the said witness, JOHN B. HENSLEE, further testified as follows:

Re-direct 1. (Witness is shown sheriff's certificate of sale to Griffith Evans, dated Aug. 19, 1882, and the assignment of said
292 Evans in blank thereupon, and is asked:)

Are you acquainted with Griffith Evans' signature, and did he sign this assignment?

A. I am acquainted with it, and he did sign it.

(Defendant here filed said certificate of sale and assignment thereon, and the paper is marked by the examiner Exhibit I 9, and hereto annexed.)

And thereupon, on second cross-examination, the said witness, JOHN B. HENSLEE, further testified as follows:

Re-x 1. Did you purchase this certificate?

A. I did; as I testified before.

Re-x 2. How much did you pay for it?

A. I have testified to that before.

Re-x 3. How much did you pay for it?

(Objected to as answered in the cross-examination.)

A. $250.

293 And thereupon, on second re-direct examination, the said witness, JOHN B. HENSLEE, further testified as follows:

Second re-direct 1. Did you purchase it for yourself or for the pool?

A. For the pool.

After reading over my deposition I wish to correct my answer to the 45 cross-interrogatory by striking out all after the word "*accepted*," and inserting in lieu thereof "and I consider that proposition still in force."

I wish also to correct my answer to the 46th cross-interrogatory

by striking the same out and inserting in lieu thereof the following: "The only contract that I remember now consists of the letter quoted in my answer to cross-interrogatory 45 and their reply thereto."

My reasons for making this last change are that upon maturer reflection and refreshing my memory I am satisfied that I was mistaken in making the answer as I formerly did. I was
294 mistaken in my answers to cross-interrogatories 47 and 48 for the same reasons, and I desire to correct them to accord with the above statement.

The contract referred to in my answer to the 54th x-interrogatory is the one to which I have referred to and explained above. So far as my testimony conflicts with this explanation I desire that the same may be understood as corrected.

I wish also to correct my answer to cross-interrogatory No. 29 by adding thereto these words: "Except that I received a telegram from them the day before saying they were informed that the Brittenstene property was advertised for sale, and asking me if it was true and the amount. I replied that it was advertised, and I stated the amount to them.

(Signed) JNO. B. HENSLEE.

And thereupon JOSEPH R. CROW, a witness of lawful age, produced on the part of the said defendant, being by me first duly cautioned and sworn, on oath, deposed as follows:

My name is Joseph R. Crow; age, 42; residence, Lead-
295 ville; occupation, railroad ticket broker. I am the Joseph R. Crow who is made one of the defendants in this action. I have no interest in this suit or in the subject-matter thereof. I know John B. Henslee; know the nature and character of his claim against the Brittenstene Mining Company. He sent me down there to pay the men off and the merchants for their supplies. He gave me a certified check on the Bank of Leadville for $1,500, with which I paid the men and merchants. It was in the latter part of 1881. It was for this money given me by Henslee that the company was indebted to him, and it was this claim that was assigned to me by Henslee. The consideration of that assignment was security on money that he owed me before. He owed me $2,200, borrowed money. This assignment was in part payment of that debt, and was bona fide and absolute. That was the claim that I afterwards brought suit on. After I recovered judgment there was a proposition made by the company to induce me to stay execution on the judgment. The proposition was that they would raise the money and
296 pay the judgment off. The proposition was made by the company through Mr. Henslee. On this promise to pay I stayed execution on my judgment for several months. Finally I had execution issued on the judgment. I received a certificate of sale of the property under that execution. I sold that certificate to Nelson & Noel, St. Louis. I have no further interest in it. I transferred

all my right and interest in it to Nelson & Noel. I was present in John B. Henslee's office on Dec. 7, 1882, and Mr. Brown was present at that time. Mr. C. Edgar Smith was also present. My recollection is that the conversation was to the effect that Mr. Smith was getting the amounts of the different judgments. He asked Mr. Henslee if he could get an extension of the time of redemption from the sales under the judgments. Mr. Henslee told him he could not.

And thereupon, on cross-examination, the said witness, JOSEPH R. CROW, further testified as follows:

x 1. Are you related to Mr. Henslee?

297 A. I am not.

x 2. Do you occupy the same office with him, and if yea, how long have you done so?

A. I do, and have done so for about three years past.

x 3. When did you loan Mr. Henslee $2,200?

A. At different times during the spring of 1880.

x 4. Do you keep any book accounts?

A. No, sir; nothing special.

x 5. Have you never kept any account with Mr. Henslee?

A. I have kept little memoranda, that's all.

x 6. Have you any book of accounts showing the dates and amounts of your loans to Mr. Henslee? If so, please produce the same.

298 A. I have; this is a bank book of the Exchange Bank, Jefferson City, Mo.; I gave him draft on May 17, 1880, amounting to $700; on June 7, 1880, I let him have $1,400, and later a draft for $500; this was Nov. 8, 1880.

x 7. What security did you take for these loans?

A. I had no security at that time except the notes themselves.

x 8. Were the entries which you have now read from the book called a bank book, made by you or by the bank?

A. They were made by me.

x 9. When you paid him the $700 May 17, did you take a note?

A. I took a due-bill, and afterwards a note.

x 10. How long was that loan of May 17 made for?

A. Mr. Henslee said he would pay it back in two weeks.

299 x 11. Then instead of his paying it back in two weeks, you loaned him $1,700 more on June 7th; how long was this for?

A. I did not. I loaned him $1,400 more. The note was made one day after date.

x 12. Between that time and November 8 did he pay you anything?

A. He paid me some money; I don't remember how much.

x 13. On November 8, according to that book, you loaned him $500 more. For how long?

A. For no specified time.

x 14. Then, after the loan was made on Nov. 8, how much did he owe you?

A. $2,500. He had paid me some, and we made a new note for $2,500.

x 15. When was that new note made, and how long did it run?

A. It was made about that time, and was for one day after
300 date.

x 16. Have you that note?

A. No, sir.

x 17. Where is it?

A. That note was given up when we had a settlement. I don't remember the date. I now fix the date as May 20, 1881. In settlement of that note Mr. Henslee gave me a note of $1,000, 30 days, and gave me 3,000 shares of Brittenstene stock in an option, and I gave him up the note. I have that $1,000 note and now produce it. It is dated May 20, 1881, signed John B. Henslee, payable to the order of J. R. Crow, thirty days after date, without interest.

x 18. Then, at that time, he reduced his indebtedness to you to the amount of that note?

A. Yes, sir; that is, the understanding was that in case the option did not go through, we stood in the original amount, $2,000.

x 19. What was this option?

301 A. It was on 3,000 shares Brittenstene stock. The following is a copy of the option:

"LEADVILLE, COLO., *May* 20, 1881.

"This is to certify that J. R. Crow has in my hands (3,000) three thousand shares of Brittenstene Silver Mining Co. stock, which I have deposited in First National Bank of Leadville, and have included the same in an option given by me to White & Eddy, of New York, at ($2.75) two dollars and seventy-five cents per share, ten per cent. of which amount is payable June 17, 1881, and balance Aug. 17, '81. And said J. R. Crow is entitled to payment for his said 3,000 shares at price and time, terms, &c., as named above."

(Signed) JNO. B. HENSLEE.

x 20. According to the terms of this option this stock was yours?

A. Yes, in the event of the option going through.

x 21. This is an agreement that you are entitled to the sum to be derived from an option of sale of 3,000 shares at $2.75 per
302 share. That would amount to considerable more than his debt to you, would it not?

A. It would.

x 22. If this was not a settlement of the matter, why did Mr. Henslee give you a note for only $1,000 and this agreement?

A. I don't remember why it was done, nor how many months the option was given for. That was a proposition he made me, and I accepted it on condition that the option went through.

x 23. Why was it not made a part of this agreement?

A. It was simply a verbal understanding between us. I cannot give any reason why it was not made a part of that agreement.

x 24. If there was any agreement outside has it been carried into effect, and if not, why not?

A. It has not. I know no reason except negligence and
303 confidence on my part that Mr. Henslee would pay when he could, and that his word was as good as his note.

x 25. Has that stock remained in the bank ever since?

A. I don't know where it is or anything about it. It was left in Mr. Henslee's hands. I never had it at all.

x 26. Have you had any subsequent settlement with Mr. Henslee, and if so, when?

A. No, sir; that's all the settlement we have had.

x 27. Then according to your statement Mr. Henslee owed you $2,500, due you May 20, 1881, and interest on that?

A. No; at that date he owed me $2,200. That was the time of the option.

x 28. You have stated that he owed you $2,500 when he gave you the option and the $1,000 note, and that you have had no settlement since. How then do you reconcile your statement in
304 the affidavit you have made in this action, that at the time of his assignment to you of the Brittenstene claim he owed you only $2,200?

A. That was the only settlement made until the assignment of the Brittenstene claim was made. In the meantime Mr Henslee had paid me money from time to time as I needed it, which brought it down to $2,200.

x 29. When did he make you any payments, and if at different times, how much was each payment?

A. It was in different amounts, from $5 to $50. It was after 1881, up to time of assignment. I had memoranda of the dates and amounts but they are missing. Generally kept those little amounts in a bank pass-book.

x 30. Then you mean to say that in this transaction with Mr. Henslee, involving this very considerable amount, you cannot produce any memoranda or account showing any payments he made you after May 20, 1881?

305 A. No, sir; the memorandum book is lost. I don't know where it is.

x 31. State, if you can, the total aggregate amount he paid you after May 20, 1881, and before the assignment to you of the Brittenstene claim.

A. Something between $400 & $500.

x 32. When did he assign you the Brittenstene claim?

A. I don't remember the date. It was a little while before I brought suit.

x 33. Was that assignment intended to be in full liquidation of his indebtedness to you?

A. No, sir; it couldn't very well be, as he owed me more money.

x 34. You have nothing to show that he owed you more money except the note for $1,000; have you or not?

A. That's all I have got except memoranda in my pass-
306 book.

x 35. Was the assignment of the Brittenstene claim made one week or one month before you brought suit? State as near as you can.

A. A week or ten days. I don't remember. A very little while before, I know.

x 36. Was that assignment made in writing?

A. The account was assigned over to me.

x 37. How was it assigned; in writing?

A. I don't remember the exact words that were on it. It was just transferred as anything else would be, I guess.

x 38. Why was not his note for $1,000 delivered up to him?

A. Because the debt and interest would amount to more than the note and account.

x 39. You can produce, then, nothing in writing in regard to any agreement with Henslee when he turned over his claim against the Brittenstene company, can you?

307 A. That's all I have in writing.

x 40. What do you mean by "That's all I have in writing"?

A. I mean that $1,000 note.

x 41. Did you attend the sale under the Crow judgment?

A. No, sir.

x 42. Who did?

A. Mr. Henslee.

x 43. What arrangement did you make with Mr. Henslee, and why did he attend the sale instead of you?

A. There was no special arrangement about it. I simply preferred that he should go.

x 44. Who employed the attorneys in the suit?

A. I did.

308 x 45. Who directed the attachment to be made?

A. I did.

x 46. Was that done at Mr. Henslee's suggestion?

A. It was done at the attorney's suggestion.

x 47. Did Mr. Henslee not advise it?

A. No, sir.

x 48. Did you give him no directions when he attended the sale?

A. None, except to bid it in unless somebody over-bid him.

x 49. Didn't you give him any instructions as to the amount he was to bid?

A. The amount of the claim.

x 50. He went there then to exercise his own discretion as to the amount of his bid?

A. Yes. Of course he had my instructions to bid the
309 amount of the claim. There was no discretion on his part about it, I guess.

x 51. How long after you received the certificate of sale before you sold it?

A. I think about 4 or 5 months.

x 52. Can you state the month?

A. I think in June.

x 53. How could the sale be in June under which you got your certificate, and your disposal of that certificate some 4 or 5 months afterwards and still be in June?

A. I can't be positive about the dates, it was so lang ago, and I got my money out of it and cared very little about it.

x 54. Then you can't say when you sold your certificate?

A. I cannot.

x 54. Can you state to whom you sold it?

310 A. To Nelson & Noel, St. Louis, and others.

x 55. How and when did the negotiation take place?

A. I don't remember when; the negotiation was made though Mr. Henslee.

x 56. You had nothing to do with it?

A. Except to transfer it and get my money; that was all I wanted.

x 57. How much money was paid you?

A. $1,000. Mr. Henslee said he wanted some money, and would like to retain some of it; I told him he could keep the balance and let me have $1,000.

x 58. My question was how much you sold the certificate for?

A. I sold it for the face of it; I don't remember the amount exactly now.

x 59. Have you no memorandum showing the amount of that sale?

A. No, sir; except in a pass-book.

311 x 60. Have you no memorandum showing the amount you received from Mr. Henslee for that certificate?

A. I have not, except said pass-book.

x 61. Can you produce any agreement made with Mr. Henslee for the balance, if any, due you on this certificate?

A. I cannot.

x 62. Can you produce any agreement with Mr. Henslee or memorandum showing how the $1,000 paid you by him on that certificate was to be applied?

A. No, sir. Nothing, except said pass-book.

x 63. Can you give any reason why you have not taken from Mr. Henslee some note or memorandum for the balance, if any, due you on that certificate?

A. I have no reason at all, except that Mr. Henslee kept the account himself. It was simply verbal on my part.

312 x 64. Can you give any reason why you did not take some receipt or memorandum from Mr. Henslee when he paid you the $1,000?

A. None at all.

x 65. What did you do with the $1,000 which Mr. Henslee paid you on the certificate?

A. I put it in the bank.

x 65½. What bank and when?

A. First National, Leadville, at the time I received it.

x 66. Can you produce any book of your own showing the time?

A. That is the book I am trying to produce now, but can't find it. The account was lately transferred to a new bank-book.

x 67. Can you and will you find that book and produce it to-morrow morning?

A. I will try to do so. I will say that it was in June, '82.

313 Adjourned to May 16th, 10 a. m.

Resumed May 16th, 10 a. m.

x 68. Have you found the bank pass-book, and if so will you produce it?

A. I have, and here produce it. It is a pass-book of the 1st Nat'l Bank, Leadville. The first payment was made about June 20, 1882, which was placed to my credit in the City Bank, Leadville, $500, which I afterwards drew out, and here show the checks for same. The next payment was July 19, 1882, and was deposited in the 1st National Bank, Leadville, as shown by the entry in the pass-book now produced.

x 69. Then you were mistaken in saying that he paid you $1,000 in one payment?

A. I was. My impression was that it was close together—within a day or two.

x 70. How do you fix the first payment of $500 as June 20?

314 A. Because I find it in this little memorandum-book which I said I had and thought it was lost, which shows the date June 22, 1882, which I entered.

x 71. How do you know that that $500 came from Henslee?

A. Well, it was not my understanding that it came from Mr. Henslee. It came through him. He placed this money in bank to my credit.

x 72. Did you have an account with the City Bank at that time?

A. No, sir.

x 73. Then why did he place that $500 of June 22 in that bank?

A. I presume it was because he received the money through that bank, and was perhaps doing business with that bank.

x 74. Did you not afterwards have any account with the bank or on book?

315 A. I did not; merely a certificate of deposit.

x 75. Can you produce that certificate, and if not, why not?

A. I cannot. I presume it is lost of destroyed. I had no further use for it after I got my money out. It should have been returned to the bank.

x 76. Then you have no other evidence that that money came from Henslee except what you have stated?

A. That's all I know about it.

x 77. How much do you consider Mr. Henslee owes you now?

A. With interest, perhaps $1,200; I don't know exactly; haven't figured it up.

x 78. You said you were present in Henslee's office at the time of Smith's call upon him, about Dec. 7. How positive are you
316 that said Smith had a word of conversation with Mr. Henslee in regard to getting further time to pay Brittenstene indebtedness?

A. I am as positive as a man could be, I guess, hearing a man ask a question.

x 79. What time of day was it?

A. I don't remember; in the morning; perhaps nine or ten o'clock.

x 80. Who was in the office when Mr. Smith entered?

A. I don't think there was any one except myself.

x 81. What did Smith say to you?

A. My recollection is that you inquired for Mr. Henslee, and said you were here in the interest of Mr. White and others, and other conversation which I didn't remember.

x 82. How long before Mr. Henslee came in?

317 A. But a little while, to my recollection.

x 83. What conversation then ensued?

A. The conversation then turned upon the Brittenstene matter.

x 84. What did Smith first say to Mr. Henslee?

A. I don't recollect what he said first. He said "good morning," I guess.

x 85. What did Smith next say?

A. I don't remember what he said next. The conversation turned upon the Brittenstene matter. I remember your inquiring about the amounts of the indebtedness, and Mr. Henslee came to the drawer and took out a lot of papers. I don't know what they were, and was figuring up what the debts amounted to, and my recollection is he told you it was about $6,000. Afterwards I heard you ask him whether he could get an extension on the sales. Mr. Henslee told you he could not.

318 x 86. You say Smith asked for an extension on the sale. On what sale?

A. I don't know whether on the sale under my judgment, or what other judgments, or all of them.

x 87. Then that is the most definite statement you can make of that conversation; is it or not?

A. That was the principal point they were talking about. That is about all I remember about it.

And thereupon, on re-direct examination, said witness, JOSEPH R. CROW, further testified as follows:

Re-direct 1. Between May 20, 1881, and the time Mr. Henslee assigned his claim to you, did you loan Mr. Henslee in different amounts at different times?

A. Yes, sir; $200.50.

Re-direct 2. State whether or not you delivered the account of Mr. Henslee against the Brittenstene company, which he as-
319 signed to you, to your attorneys prior to the instituting of the suit?

A. Yes, sir.

Re-direct 3. State whether or not from looking over your books which you have produced here, you are satisfied that at the time Henslee assigned his claim to you, Henslee was indebted to you in the sum of $2,200.

A. He was.

Re-direct 4. (Here witness is shown a sheriff's certificate of sale, with assignment thereof, and is asked—) Is that your signature to the assignment?

A. It is.

(Said certificate of sale and assignment thereon are thereupon filed in evidence by the defendants, and the paper is marked Exhibit P by the examiner, and annexed to and made a part of witness' deposition.)

And thereupon, on second cross-examination, the said wit-
320 ness, JOSEPH R. CROW, further testified as follows:

Re-cross 1. You have said that you sold this certificate just put in for its face, which is $1,718.27, and that Mr. Henslee has paid you only $1,000 of that amount. Then he owes you the balance, $718.17, with interest, does he not?

A. That's about it, sir.

Re-cross 2. Besides that, does he owe you the amount of the note which you hold for $1,000?

A. No, sir.

Re-x 3. How then do you arrive at his debt?

A. We haven't arrived at any definite amount. In fact we have not had any settlement since. It would be, as I said, about $1,200.

Re-x 4. How do you arrive at the $1,200, about which you say he owes you?

321 A. Just by estimating the interest on this balance it would amount to about that.

Re-x 5. How does it happen that you say you received $500 on account of this certificate June 22, and the date of your assignment is July 19?

A. My first impression was that Mr. Noel had taken the whole certificate, but after thinking over it I find he only took part of it, and afterwards other parties took the rest of it at the time I made the assignment.

Re-x 6. That answer is all a riddle to me; will you explain it?

A. That is all the explanation I have got.

Re-x 7. Then all the business of selling this certificate was done by Mr. Henslee?

A. Yes, sir; he negotiated the sale and I had nothing to do with

making the sale. On reading over my examination, I wish to add here that in my answer to the 51st x-interrogatory I had in mind the stay of judgment instead of the time of sale as inquired
322 about; in fact I sold the certificate a few days after I received it.

(Signed) JOSEPH R. CROW.

And thereupon SMITH P. BROWN, a witness of lawful age, produced on the part of said defendants, being by me first duly cautioned and sworn, on oath deposed as follows:

My name is Smith P. Brown; age, 44 years; residence, 601 Harrison avenue, Leadville; occupation, mining. I believe I was presen or about Dec. 7, 1882, in Mr. John B. Henslee's office when Mr. C. Edgar Smith was present, and Mr. Crow also, if my memory serves me right, and Mr. Bassett. Mr. Smith, the attorney from Denver, told Mr. Henslee that he came here in the interest of Mr. White, and wanted to know what information Mr. Henslee could give him in regard to the Brittenstene property, the amount of judgments that the property had been sold under, when the time of redemption run out, &c. Mr. Henslee told him several amounts. I couldn't tell what these amounts
323 were, but referred him to the county records at Buena Vista, and told him I believed that they were all a matter of record there, and that his better plan would be to go to Buena Vista and examine the records, as he could then get day and date and amounts to a cent; I believe he asked Mr. Henslee if he couldn't accompany him down there, and Mr. Henslee told him it would be a matter of impossibility on that day or the next; that he didn't think it would do him any specific good for him to accompany him, as it was a matter of record, and he was probably as versatile in searching the records as he was, or more so; Mr. Henslee also told him that there was one amount, I couldn't state which amount, that the redemption would run out in a very few days, say 3 or 4, possibly 5 days from that time; Mr. Smith said he would attend to it and redeem it; that's about all I know, I believe, or can call to memory at present.

Int. To refresh your memory I will ask you whether there was anything said about an extension of time in which to redeem this property, & if so, what?

324 A. There was; it was simply a request to Mr. Henslee by Mr. Smith to have the time extended; Mr. Henslee answered him that he hadn't the power to do it, and wouldn't do it if he could; that is all I remember.

And thereupon, on cross-examination, the said witness, SMITH P. BROWN, further testified as follows:

Cross 1. How do you fix the date of this conference?

A. I fix it by my attention being called to the fact a short time afterwards, that there might be litigation in regard to the matter,

and by my making an affidavit in regard to this matter previous to this time.

x 2. How long afterwards was your attention called to it?

A. Some time during the month, I couldn't say what day; I believe the *the* affidavit or deposition was taken in January.

325 x 3. How long before you made the affidavit did you talk with Mr. Henslee about it?

A. Probably a month.

x 4. Are you as positive in regard to the time you made the affidavit as you are about your other statement?

A. No, sir.

x 5. Do you know month or day?

A. I cannot give the day; it might have been in January or the forepart of February.

x 6. Were you paying attention particularly to the conversation between Smith & Henslee?

A. Yes, sir.

x 7. For what purpose?

A. For one purpose: I had been handling some Britteustene stock, and a friend of mine was engaged in a law suit here

326 in regard to some Britteustene stock at the time, in whom I was interested, and I wanted to gain all the information I could in regard to the company.

x 8. State exactly what Smith said when he asked for an extension as you say.

A. He said that the time was a little short in which to hear from this party in Philadelphia, and wanted to know if an extension could be granted.

x 9. An extension of what, or for what?

A. For the purpose I believe of taking up or redeeming this matter heretofore spoken of by Mr. White, his principal.

x 10. That's the most definite thing you can say about it, is it?

A. Yes, sir.

x 11. Are you sure that Smith represented that White was of Philadelphia?

A. Yes, sir; I so understood it.

327 x 12. You are as positive of that as of anything you have stated?

A. No, sir.

x 13. You have read your deposition and changed the last two answers. Why have you done so? Because it looked bad?

A. Because I made the answers without due reflection, and too hastily.

x 14. You have also stated in another part of your deposition the same thing. Was that stated too hastily, also?

A. No, sir.

(Signed) SMITH P. BROWN.

P

And thereupon FRANK W. OWERS, a witness of lawful age, produced on the part of said defendants, being by me first duly cautioned and sworn, on oath deposed as follows:

328 My name is Frank W. Owers; age, 30 years, residence, Leadville; occupation, lawyer. At the request of Messrs. Ross & Coston, attorneys at Buena Vista, I called on Mr. Henslee at his office in Leadville, on or about Dec. 2, 1882, and showed him a telegram which had been handed me by Ross & Coston, which telegram related in some manner to the matter of the redemption of the Brittenstene Mining Company's properties. I had been asked by Ross & Coston to obtain from Mr. Henslee, and the parties whom he represented, an extension of the time for the redemption of certain of the company's property. Mr. Henslee informed me that he did not consider the company had any redemption, and that he would not extend the time for such redemption if there were any. I think I saw Mr. Henslee about noon of that day, and went directly from my interview with him to the telegraph office in Leadville, and telegraphed the result of my interview to Messrs. Ross & Coston, as they had asked for me to do.

And thereupon, on cross-examination, the said witness, FRANK W. OWERS, further testified as follows:

329 x 1. Do you know whom Ross & Coston represented?

A. I understood they represented the Brittenstene company in some way.

x 2. You don't know what interest Ross & Coston represented?

A. I do not.

x 3. Did Mr. Henslee give you any reason why he thought the company had no right to redeem the property?

A. I think he said the time for redemption had expired, as he understood it.

x 4. Do you know why you were sent to him?

A. I do not.

x 5. Did Mr. Henslee tell you that he represented anybody else in the matter. But in what capacity and whom he represented I don't know. I don't remember whether he stated or not.

330 And thereupon, on re-direct examination, the said witness, FRANK W. OWERS, further testified as follows:

Re-direct 1. State whether Ross & Coston gave you a telegram for your guidance in the matter, and where it was from, and by whom signed.

(Objected to as secondary.)

A. Mr. Ross handed me a telegram saying: "I wish when you get to Leadville you would see John B. Henslee about that telegram and ask him if he will extend the time for redemption. I asked redemption for what?" He said, "Oh, show him the telegram; he will understand it's the Brittenstene property," or words to that effect.

My impression is that the telegram was signed White, preceded by initials which I don't remember.

(Signed) FRANK W. OWENS.

And thereupon OLIVER H. SIMONS, a witness of lawful age, produced on the part of said defendants, being by me first duly
331 cautioned and sworn, on oath deposed as follows:

My name is Oliver H. Simons; age, 38 years; residence, Leadville, Colo.; profession, physician.

I am one of the parties who made an answer in this case. I know Mr. Joseph R. Crow, who is a defendant in this suit; he has not, to my knowledge, any interest in this suit or in the subject-matter thereof. I know Mr. John B. Henslee, one of the defendants in this suit; he has not any interest in this suit or the subject-matter thereof that I am aware of. I am interested in the issues involved in this suit. The certificate of sale filed herein and marked Exhibit P and Exhibit I 9 are owned by myself and Nelson & Noel, James Streeter, and Mr. Loker. I own one-third interest in them and the other parties named own the other two-thirds; that is my understanding of it. I am not positive as to Mr. Loker's initials.

About the middle of June, 1882, my brother J. L. Simons suggested to me that we take a lease upon the Brittenstene property at
332 Alpine; he went to Alpine to examine the property. On his return he said the property had been sold upon execution, that the certificates of sale could be purchased, and that in his opinion it would be better to purchase them than to take a lease on the property. Knowing Mr. Henslee to be the agent, I consulted him regarding it. He said he thought the certificates could be purchased. After ascertaining the amount, and it being more than I could pay, I asked him if other parties could be found to take an interest with us in the purchase. He mentioned the names of Nelson & Noel. I don't remember whether at that time the names of Mr. Loker and Mr. Streeter were mentioned or not. I told Mr. Henslee that I would take a third interest in the purchase if these parties would take the other two-thirds. About July 1, Mr. Henslee informed me that such arrangements could be or had been made. On July 3rd I made the first payment, I think $150, and from time to time until about the middle of August I paid between $1,100 and $1,200. Subsequent to that time I paid one-third interest in two assessments, $66.66, and $404 more for an interest in the Falkenan judgments.

333 I had conversation with Mr. Henslee about his becoming interested with me in this purchase of the interest in the certificates and judgment. It was about the middle of June, 1882, at my office that I first talked with him about it. I asked him if he would not take an interest in the purchase, and he replied that he could not; that having been the agent of the company, it would be out of character for him to do so. The amounts paid by me, as

above stated, were paid in the purchase of these judgments and certificates of sale as one-third owner in this pool.

The judgments purchased were the judgments of Howe and Falkenan, and the certificates were the certificates of Crow, Evans, and Robison.

As a member of this pool, I gave Mr. Henslee authority some time in December to make a proposition to Mr. John E. White to become a member of the pool. That proposition was that he should pay for the assessment work on the claims and give us one-third interest in the property.

I received one-third of the money paid in redemption from the judgments and certificates of sale. After the redemption of the first certificate of sale I expected the rest would be redeemed. No
334 objection was made by me or by any of the pool, to my knowledge, to receiving the money paid in redemption of the property from the sales. Nor was any obstruction made or authorized to be made to prevent such redemption. There was no objection made to receiving the money to my knowledge, nor was any obstruction offered to the payment of it.

I will state that since the adjournment I have refreshed my memory as to the names of the members of the pool from memoranda that I have, and am now able to give them as Nelson & Noel, James Streeter, William N. and J. R. Loker, and myself.

And thereupon, on cross-examination, the said witness, OLIVER H. SIMONS, further testified as follows:

Cross-interrogatory 1. How does it happen that you couldn't recollect the names of your associates in this pool until you had had opportunity during the adjournment of consulting with Mr. Henslee and your attorney?

335 A. I have given very little personal attention to the matter in controversy. In conversations with Mr. Henslee on the subject we generally spoke of W. N. & J. R. Loker as the Lokers. I have had no conversation with Mr. Henslee since the adjournment upon this subject, but with my attorney, who said if I had any memorandum from which I could refresh my memory on this subject I was at liberty to do so, and which I have done.

x 2. In your direct examination you stated that your associates were Nelson & Noel and other St. Louis parties, James Streeter and Mr. Loker, and could not give the latter's initials, and that these owned two-thirds and you one-third. What memorandum have you consulted by which your memory has been refreshed?

A. A memorandum in my possession.

x 3. Will you produce it?

A. I will.

x 4. When was that memorandum made, and in whose writing is it?

336 A. It was made, I think, in Dec., 1882, and it is in Mr. Henslee's handwriting, I think.

x 5. Has it been in your possession ever since?

A. Yes, sir. [Here the said memorandum is marked by the examiner Exhibit K 10 and annexed hereto.]

x 6. What interest have Nelson & Noell?

A. I think five-twelfths, but I am not positive in the division of these interests.

x 7. Did you make the arrangement with Mr. Henslee as to your interest?

A. I did.

x 8. Then you have left the whole matter to him, not troubling yourself much about it?

A. As I said before, I have given it very little personal attention.

x 9. When did you have your first interview with Mr. Henslee about this matter?

337 A. About the middle of June, 1882.

x 10. That was when you testified in the direct that he called on you?

A. I sent for him.

x 11. What compensation was Mr. Henslee to receive for all this trouble?

A. No specific compensation has ever been fixed.

x 12. There was, then, a tacit understanding that his labors in behalf of the pool were not to be gratuitous?

A. In case the property was not redeemed Mr. Henslee would, I think, have had the handling of it for us.

x 13. Would he not likewise have an interest?

A. He refused, at my suggestion, to take any interest as liable to misconstruction. I mean that my suggestion was that he should take an interest.

338 x 14. Mr. Henslee has testified that he bought a portion of Nelson & Noel's interest. Do you know anything about that?

A. I do not.

x 15. Did you consider his agency for you and the pool compatible with his agency for the company?

A. The company could hardly be said to exist, and I saw nothing wrong in case the company did not redeem in Mr. Henslee's holding an interest.

x 16. And you see nothing now, after hearing Mr. Henslee's testimony, that is inconsistent in the two relations?

A. The company not having redeemed, I can see no wrong in his owning an interest had he chosen to do so.

x 17. Have you kept any account in this matter?

A. I have an account of the money I have paid Mr. Henslee. It is not with me.

339 x 18. Of the $1100 or $1200 which you say you have paid into the pool, how much has been paid back to you?

A. I cannot state the exact amount.

x 19. State it as near as you can.

A. Mr. Henslee and I have had numerous transactions between

us involving the purchase and sale of stocks, and the amount due me from the money paid by Mr. White or his agent has entered into those transactions. The memoranda have been kept upon slips of paper, and when settled they have been destroyed. I could, however, by refreshing my memory from some memoranda in my possession, state approximately the amount. If necessary I will do so.

x 20. You have left this matter then wholly to Mr. Henslee?

A. Very largely so. But he has consulted me very frequently when occasion required.

340 x 21. Who has had the arrangement of the different interests which the parties were to have?

A. Aside from my own interest I do not know, except upon information.

x 22. You are the defendant who swore to the answer to this bill, are you not?

A. I am. To a portion of which I swore upon information, or as I had been informed.

x 23. In your answer you deny that the property is worth $50,000. How did you derive your information?

(Objected to, unless witness is shown the answer.)

A. I derived my information principally from my brother, J. L. Simons, who examined the property in June. I have heard other parties speak of the property, and it has been talked about more or less. I will mention Robert Clarke as one, and some others. I have heard Mr. Henslee speak of it.

x 24. You also deny that the property had distinct boundaries, and you allege that it was only valuable as a whole property.

341 How did you derive your knowledge of that?

(Objected to because witness is not shown the answer.)

A. From information.

x 25. You also deny that the complainant was diligent in paying off the claims and that he forwarded money sufficient to pay them?

(Objected to because witness is not shown the answer.)

How did you know that?

(Objected to as above.)

(Here counsel for defendant instructs witness that if he chooses he may refuse to answer any questions as to what he swore to in his answer in this action without said answer is produced and shown to him, that he may know that the statements about what he is questioned are contained in said answer.)

A. I was informed by Mr. Henslee that the Crow judgment had not been paid at the time the period for redemption had ex-

342 pired.

x 26. Do you remember that you admitted in your answer that at the time of White's purchase there were certain liens against the property?

A. As I have not the answer here I will not answer that question. I am not clear on that subject.

x 27. Do you remember that you admitted in your answer that the

Crow judgment was entered Jan'y 13, 1882—$1,594.04—and that the property was sold on that judgment on June 17th; and that there was a recital in the Crow certificate that the sale was subject to execution of G. M. Robison, and that you alleged it was not so, and that the clause in regard to the execution was inserted against the protest of Crow made at the time?

A. My memory on that subject is not clear.

x 28. Did you not derive all your knowledge of the matters to which you swore in your answer from Mr. Henslee; and if
343 not, from whom?

A. Until I have a copy of that answer, not knowing all it contains, I am unable to say.

x 29. Did you not deny in your answer that Mr. Henslee informed Smith that he either owned or controlled all the judgments?

A. I have not the answer here.

x 30. Did you not deny in your answer that Henslee, either for himself or others, purchased the two Evans certificates?

A. I don't remember all that answer contained, and I refuse to answer any more questions as to the contents of that answer until I have an opportunity of examining it.

x 31. Do you know whether or not Henslee did purchase the two Evans certificates?

A. My recollection is that he did.

344 x 32. Do you know whether the Brittenstene property consists of distinct parcels or not?

A. I have been informed that it consists of several veins that intersect each other at different points.

x 33. Have you ever seen a plat of the property?

A. I have never seen any official plat or survey of it.

x 34. Do you know that Henslee sold Crow his claim; if yea, how do you know it?

A. I was so informed. Heard Mr. Henslee say so and Mr. Crow.

x 35. Do you know whether you alleged in your answer that Henslee notified the company by wire that he had, as agent, suffered judgment to be entered, and that he so notified the company immediately after judgment?

345 A. I have stated that I would answer no more questions relating to the contents of that answer until I had an opportunity of seeing the answer and knowing whether such things are stated.

x 36. Have you any recollection of such allegations?

A. I have.

x 37. What is your recollection?

A. That the company was informed by telegraph that to save the expense of suit he had confessed judgment in favor of one Crow.

x 38. Where did you get that knowledge?

A. From Mr. Henslee.

x 39. Do you remember whether you alleged in your answer that the Crow judgment was the first lien?

A. I think it is the first lien, but I don't know that I alleged it in my answer.

346 x 40. Was not that answer entirely prepared before its submission to you?

(Objected to as irrelevant, incompetent, and immaterial.)

A. It was not.

x 41. Is it not a fact that you had to depend upon others for nearly all the information by which you were enabled to swear to the answer in this action?

A. I stated in that answer that the subject-matter of it was largely or partly of information and belief.

(Signed) OLIVER H. SIMONS.

I, the above named Robert H. Buck, an examiner in chancery of the Circuit Court of the United States within and for the district of Colorado, duly appointed and qualified, do hereby certify that before the examinations of the said deposing witnesses, they, the said John B. Henslee, Joseph R. Crow, Frank W. Owers, Smith P. Brown, and Oliver H. Simons, were and each of them was by me duly cautioned and sworn as a witness in said

347 cause before the taking of their respective depositions was commenced; that said depositions were and each of them was taken by me at Leadville, in the county of Lake, in said district of Colorado, on the fifteenth, sixteenth, and seventeenth days of May, A. D. 1883; that said deponents were and each of them was carefully examined, and the testimony of each of them was reduced to writing by me and by no other person, and that after the same had been so taken and reduced to writing the same as written down were read over by me to the said respective deponents therein, who thereupon subscribed the same in my presence at the place and on the days aforesaid; that the parties to said suit were by their respective attorneys, C. Edgar Smith, esquire, on the part of the complainants, and L. N. Buck, esquire, on the part of the respondents, present during the whole time of the taking of the said depositions; and I do further certify that I am not of counsel or solicitor to either of the parties to said cause, nor interested in the event of the same.

(Signed) ROBERT H. BUCK,
Examiner.

348 Examiner's fees:

3 days @ 5	$15 00
260 folios @ 20	52 00
Filing 35 exhibits, 10	3 50
5 oaths to witnesses, 10	50
Express charges	25
Paid by defendants	$71 25

Exhibit A.—R. H. Buck, examiner.

NEW YORK, *Feb'y* 1, 1882.

FRIEND HENSLEE: Mr. White has been sick for several days, and your telegram was sent to his house. I have just seen it, and am amazed at its purport. That such an action is contemplated by you through Mr. Crow exceeds any thought or fear *I* have ever had of the disaster that might or may come to our interests; for should you through Crow advertise and sell, the *fatal* blow will then be given. What is threatened may force the pace, but I fear you will lose much in Mr. White's estimation, as well as other directors; for while we recognize that you should have been paid long ago,
we are not blind to the fact that such action by you will
349 not only bring disaster to us, but to friends who have put
their money in upon our representations backed by you, our friend, and the firm, staunch friend of our enterprise. I am not ready to believe that you are disposed to destroy our interests, our faith, our confidence. Mr. White has had a long and satisfactory interview with Mr. Morrison, & is certain that he intends to do all in his power to get company indebtedness into a *safe* shape. When the proposition was made to put a mortgage upon property some time ago, the objection then made was that the value of stock would be destroyed. Had it been done, think you our stock would be as low as now? In my opinion, this should be done at the earliest possible day, in the interest of all concerned. Mr. White urges it strongly. His proposition is to get stockholders' consent, & thus relieve this grinding pressure, & *save* the company, instead of allowing it to drift against the rocks.

The company owe, including patents, &c., say $15,000. Mortgage property, with company's right of redemption any time in 3 years, at
6 per ct. per annum; issue bonds to each holder of valid
350 claim against the company—Mr. White will agree to swing
3700 of same, Morrison to take between 6 $7,000; no doubt you could influence Evans to take bonds for his claim. Mr. W. agrees to pay $500 cash as earnest of what he proposes. I know that W. has $2,500 already earned in his business & now due him, but he can't get his hands upon it the moment. Proposition already made Morrison (copy of which I enclose) is not mortgage, but notes to run not less than 1 year. If creditors will accept bonds for debts, co'y to agree to let property on tribute on satisfactory terms, or, if they work it themselves, to place all net prodts in sinking fund to retire mortgage loan. It is evident to my mind that this is the proper plan to pursue, & the *only* one I can see. The stock *can't* be depreciated by thus guarding against *disaster & ruin* to the company's interests. If property sold, what will be the result? Ryan probable buyer—but have no basis for this, except clearly his interest—such action on Crow's part wrecks co'y & *reflects directly on Henslee.* I feel quite sure that so far as you & Evans' claims are concerned, if

your circumstances are such that you *must* have part money,
351 that Mr. White will engage to pay a fair proposition in 30 days, or so soon as he can get his money from his foreign business, now earned, and I *think* the others will do something. We hope you will recommend the mortgage proposition, be our *friend*, & lend your aid to tide co'y over present difficulties. Mr. White says he don't propose that *you & St. Elmo* people shall wait 3 years. He want 4 mo's from you, & the $2,500 he proposes to raise will go to you & St. Elmo people. Can he do more, I would ask?

I am, your friend, (Signed) L. B. EDDY.

Exhibit B.—R. H. B., examiner.

NEW YORK, *Feb'y* 14, '82.

FRIEND HENSLEE: Referring to the proposition in my letter of yesterday, I would again impress upon you the great importance of its ready acceptance by the Colorado creditors of the company, because it insures *safety* to all the stockholders and the possible early resumption of work on the property. I believe that I am
352 safe in so believing. We are aware, from your frank admissions, that you are unable to give any personal financial assistance at this critical time; but you *can* use your influence, & probably get those holding claims to unite under a trustee holding mortgage upon property to amount of the claims. Their agreement to this plan is of the utmost value, for not only does it remove the present threatening troubles, but enables us to satisfy eastern creditors with *notes* running a year; puts us in a position to answer questions from those who it is thought would lend aid to work property; again, would help us on our personal matters with Ryan. If it were possible at this time to raise the cash for those pressing claims, I am certain no such proposition would be made. Mr. White says he will go so far in the interest of the stockholders as to give his six (6) months' note to retire or pay those claims. Therefore, in addition to the security of the mortgage at one year they will hold his personal guarantee of payment in six months. In doing this you nor they must not imagine that Mr. White desires or *wishes* to do so, but is actuated by his intense desire to protect the
353 company & the stockholders. From my knowledge of his business & its *increasing* opportunities am satisfied of his ability to make good his guarantee and pay his note at maturity, and this too aside from the strength it will give him & company with his friends, where *now* is only weakness. He is nearly, if not quite, worked out of the hole that his *personal* sacrifices in the past year for the Brittenstene placed him, & is willing to take on another load, but cannot, *will not*, do it all alone. If those holding claims in Colorado are *friends* of the company & care to see safety & success *made* for the enterprise, your strong influence with them & their acceptance will go far to promote what we are all striving to accomplish. It is my opinion that ere six months are gone they will get

their money, & mortgage in hands from which no danger will arise, if not paid off. If I questioned this I should not urge it. My interest is at stake as well as others. The *first necessary* thing to be done is to satisfy those now pressing & threatening our property. That *done*, then create value by *working it*—by restoring confidence—this I assure you will follow closely, when *safety* is gained. The proposi-
354 tion has all the elements, & I *urge* you by all your good wishes for your stockholders & *every personal* consideration & *sincere friendship*, devote yourself to this end—notify me at earliest day if successful—for with success on your part, the rest will be comparatively easy for us. I regard the present the most critical point yet reached for the company, & 'tis manifest to me that our *first duty* is to *protect the stockholders*. We can suggest no other way at present—for money *now* is out of the question. It *will* come if our friends will help us, accept *security*, rather than push us over the falls, & bring disaster & ruin to the company & many of us interested. I believe & trust you CAN & WILL accomplish you part. I might add that *ours* is almost done if you will notify me they are ready to accept. We will also help to negotiate the paper & all else in our power.

Sincerely yours, (Signed) L. B. EDDY.

Exhibit C.—R. H. B., examiner.

NEW YORK, *Jan'y* 14, 1882.

FRIEND HENSLEE: Yours of the 9th rec'd. Have also seen
355 yours to Mr. White. Evidently you now understand the true position of affairs. It occurs to Mr. White and myself that something *can* be done to protect our interests, but you and we must hang together and pull together. Now what can be done, and how can *we* do it? Mr. White suggests that you get together say 60,000 shares, and we do the same, and pool the 120,000 shares for a loan of say $30,000, one-half of which to go to each 60,000 sh'rs of stock. The probability is, by so working together and thus pooling 120,000 shares, that we could then make such a proposition for operation to strong men that would be acceptable. From what Mr. E. R. White says we are of the opinion that under some such combination of circumstances he could induce his friends to take hold and *push* things with a will. As matters now stand, with large amounts of stock ready to be thrown upon the market, our efforts would amount to certain failure. We are not disposed to give up the ship, and you will find us eager to join in any arrangement for our mutual good and protection. From Mr. Drummond's talk at our last meeting I doubt his intentions. From Mr. Morrison's *acts* I have no confidence whatever in him. Their promises and *written* agree-
356 ments to secure Mr. White's option for their deal, which have never been carried out, have been quite enough for us. What M. said and promised to you we are ignorant of. What *we* must do let us perform jointly, and if there is a deep-laid scheme to beat us,

see if by concerted action some plan cannot be worked out to defeat them. Ryan is on *their* side, and we sincerely believe that he would not entertain any proposition to surrender any part of his collateral without his money. If we could interest the Ward party we can see the benefit, but upon his proposition it is utterly impossible. If his principals would put enough money into treasury to get to dividend basis, paying a fair price for the 15,000 sh'rs, your friends and ourselves giving them an option on block of stock for a loan to get our stock out, & we further agreeing to unite with them in control of the company, something might come of it. They certainly would not propose *anything* had they not faith in the property. Would they not take Ryan's place as regards ourselves, provided you tie up the Western stock? Only a suggestion of mine. If you can't suggest a plan more acceptable to all, & could *assure* us that Western holders will pool, I think we can raise money to retire Ryan's loan on our stock, & soon after give a different face to the
357 company, getting in strong parties, & before the year is old win success. Think of this calmly and write us fully.

Sincerly your friend,

(Signed) L. B. EDDY.

Exhibit D.—R. H. B., examiner.

NEW YORK, *Jan'y* 30, 1882.

FRIEND HENSLEE: Yours of 19th, with Hoosier Girl possibilities, came last week. I believe it a good property, & only hope I can come to time on a "lay out." The clouds look dark over me, however. I can't tell you any definite price for Brittenstene here; have only heard it can be bought at 20 to 30 cts. a share. I am working hard on personal account here & in Cleveland, & should any inquiries be made of you please refer *strongly* to your confidence in value of property, value of ore exposures, & future prospects, &c., &c.; also state amount of stock you placed at $3 before work had begun on property. Cheap prices of stock, under present diadvantageous pressure, will only serve to kill my efforts, which I am sure
358 you would avoid. I regret intensely that you have brought suit against company through Mr. Crow. This *hurts* more coming from *you* than if *any one* else had sued. Am trying to get a rich cousin here to rescue my stock from Ryan. He's worth ½ million *sure*. Suits & attachments will block all my efforts. Am offering big inducements here & elsewhere, & may want 10,000 shares *very* cheap—stocks as much below 50 cents as possible; if so, it will fall in good hands. I will wire you immediately my plans ripen, & you reply in care of C. H. Todd, 68 Beaver st. Should I want block stock and ask for quotations, I shall mean how much under 50 cents for *cash* on delivery of stock here.

Regards to all. I am your friend.

(Signed) L. B. EDDY.

I don't want you to understand that we are *positively* certain that parties holding claims here are willing to take *notes* for same *under*

the mortgage to the Colorado creditors. We have assurances that this will be done under this arrangement, however, and if your reply comes favorable believe it will serve to clinch it.

They want mortgage for sufficient to cover claims here, and
359 we thoroughly appreciate; 'tis asking a great deal for them to take notes, while a mortgage is given Colorado parties. With your success we *believe* it can be done; but should they refuse, do not want you to blame us if your parties are ready to accept proposition. If you can arrange this we pledge our *best* and continued efforts to perform according to what we believe can be done at this end. We assume, by what has been said, that this can be done, & want to add *this* so that no censure can attach itself to *us* if they (here) decline.

Yours, (Signed) EDDY.

Exhibit E.—R. H. B., examiner.

NEW YORK, *Feb'y 20th*, 1882.

Mr. JOHN B. HENSLEE.

DEAR SIR: Your favor of 16th to White, Drummond, and Eddy rec'd. Mr. Eddy has read same, and will probably answer as suits him. Mr. Drummond is in Pittsburgh for the next three or four days. The following are my own personal views, statements, &c. All I have but my reputation is in the Brittenstene proposi-
360 tion. I have succeeded in dragging myself out of debt, and look forward to my future with hopefulness and courage. I feel keenly the danger of the stockholders from the position taken by Colorado parties. If their actions would help instead of cripple our best efforts I would say God speed to anything that might hasten success. After much tribulation we have got *our* White & Drummond entire interest held in a solid block in a *perfectly* safe and satisfactory manner. If we are not *baulked* by action in Colorado all will come out straight as a gun-barrel. The next move is to settle Colorado claims. I recommend you to get your friends together and induce them to take a mortgage for their united claims, including costs of completing patents for one year. My idea is to make all eastern parties take notes. This accomplished and I can relieve the mortgage in sixty days myself. Meanwhile your friends will be protected by all the co'y owns, and give me time to work out safely to stockholders. The above is suggested upon what I know I can do myself outside other efforts of a strong character. As soon as your mortgage can be retired I propose to have a mortgage made
361 to cover all (paying yours off) for enough to cover all debts, say $15,000 for 3 years, at 6 per c't interest, reserving the right to pay as much sooner as they choose.

Finally. I believe a company can be organized here with a cash paid-in capital of $25,000, who will take a lease of the mines for a term of years for half the net profits. They would have to be restricted to doing the proper amount of development work on York tunnel & Quincy lode, and by having a long lease they would have to, in

their own interest, do a proper amount of development work. I favor a ten-year lease in interest of all.

Now, how would it leave matters? Three years to pay company's debts (if the time is needed); amount, say $15,000. Assets: What ore is mined at present, 15,000 shares in treasury, and ½ profits arising from lease co'y's work. With this done *safety* to stock is *assured*. My friends would hold & *buy more*. All holders of the B. S. M. Co. would have a right to take their pro rata share in operating co'y; and I know certainly three who would be glad to take double their share; so no stockholder could be wronged, but, in point of fact, all would have the chance to furnish their share
362 of working capital. This is what it really and & truly amounts to. The operating co'y might fail, but they could not until their money was spent, and that would be in Brittenstene mine, and their work would accrue to latter's benefit without leaving them—B. S. M. Co.—in debt. If you think you can work a better plan, and it is safe for stockholders' interests, you will have my best wishes and earnest support. For heaven's sake, however, don't cut, slash, or ignore proposals, plans, or suggestions from me or any one that protects our own and friends' interest UNLESS you can put up something better that will work.

Y'rs very truly, (Signed) JOHN E. WHITE.

Exhibit F.—R. H. B., examiner.

NEW YORK, *Feb'y* 21, '82.

FRIEND HENSLEE: I have received all your favors. Your telegram saying creditors want definite assurances before agreeing to wait until March 15th was also rec'd, and each day since we have expected to give such. Mr. Morrison is hard at work on some parties
363 for a loan to pay off claims, and is hopeful getting it by March 15th. The fact is that the directors have exhausted themselves, and I may add their friends also. The money *must* come from outsiders, and a mortgage the *only* way now open to obtain it. Certain it is that every *moral* obligation rests upon you and us to *protect the stockholders* from the threatened advertisements and sales of the company's property, and let me assure you that we will do all in our power to protect them, save the property and our own interests. Being drained of funds, *time* is positively required to get it. I have read Mr. White's of to-day to you, and must say I agree heartily in all he suggests. If creditors in Colorado will agree to take mortgage upon Mr. White's agreement to pay them in sixty days, I can assure you that he will have good, strong aid to make his agreement good. I have *every* faith that he can do what he says. As a suggestion, could not you raise the money for 60 or 90 days upon mortgage to trustee for those claims and get them thus satisfied? Would not some private or banking institution loan the amount for that am't upon a mortgage as their guarantee? Certainly there is

value enough in such a mortgage to make good to *any one*
364 several times such a loan. If so, directors here will see that the loan is paid off at maturity of such a loan. Is not this the interest of everybody? It seems so to me. For with those threatening claims removed, the next step will be to make arrangement for *continuous* work—not a start to fail again. No digging a hole for us all to tumble into again. I consider Mr. White's suggestion in this particular the *wisest*, *safest*, and *pregnant* with good results for all concerned. That it contains *more* of the *true* elements of future success to our company than any plan proposed up to date. Don't you think *Ward's* party would operate the property under such an arrangement? They would practically get as much as though they bought half the stock, which is utterly impossible. This is my suggestion with such an operative company working the property under proper restrictions and guaranteed, looking to safety for stockholders. I am of the opinion that in one year's time our stock will grow in value to the entire satisfaction of all.

Such a company, with 25 or 50 thousand dols. capital put into property, I firmly believe would carry our stock to $5 in *much shorter time* than our fiddling with a few thousand dollars to "start her up." As Mr. W. says, the stockholders would have the oppor-
365 tunity and right to subscribe for any amount, or in proportion to their holdings. Now, what would be the result if claims can thus be paid, and a strong operative company working the property? *Safety gained for all* and a *positive* certainty of growing value to our stock by and through *continuous* and *regular* working—development and marketing of ores. The *other* side shows *loss to all*—not without dark spots appearing upon our honor—for we can't get from under our moral obligations to those we represent, nor can you to those stockholders you represent. I believe you can influence Campbell, Evans and others to help us to extent asked, and you can rely upon this end to carry out promises made. If it is possible *better* will be done, and done sooner. Trusting to your early favorable reply, I am sincerely yours,

(Signed) L. B. EDDY.

Exhibit G.—R. H. B., examiner.

NEW YORK, *March* 6, 1882.

FRIEND HENSLEE:

I have your favors and note contents. As regards assessment work on cross-cut tunnel I can say I have referred to same
366 in conversations with members of the directory, and to-day I have again brought it to their notice. No doubt some action will be taken to prevent any jumping, though we have thought that the large amount of work done was more than ample to protect against such steps. I should think Hamilton might take hold and do that work in company's present pinch—only a suggestion, however. I am sure that it has not been intentional on my part to ignore any-

thing coming from you, and I believe I can so speak for Mr. White. It is no wonder if items have been passed over by both of us, being so under the harrow and working day and night to prevent disaster to friends and ourselves. I hope my stock quotations have been of advantage to you. I see Robinson has advanced 40 cents since Saturday's quotations. I sincerely hope it *made* you something. My telegram should reach you by 11 o'clock. I wire 12:15, *immediately* after 2d call. If you prefer I might send you 10:30 call. I regret intensely about my loan. I have word from Cleveland that they expect to do something shortly, and shall relieve you the instant I can. If the good Lord will aid me and help me to success in this work I can move myself. Should I wire for stock (if at figure I can
367 handle it) endorse in *blank* and send to your bank *here* certificates from 500 to 1,000 shares; at same time notify N. Y. bank to let me know that stock is held for delivery upon payment, &c. All such communications directed in care of *C. H. Todd*, 68 *Beaver street.*

Sincerely your friend,
(Signed) EDDY.

Exhibit H.—R. H. B., examiner.

NEW YORK, *March 7th*, 1882.

FRIEND HENSLEE:

Your favors to date received. Morrison, Drummond, White, and self had a meeting yesterday to devise means to protect company's property against creditors, and also to discuss your telegram to Mr. White as to mortgage, &c. We are all of the same mind, and propose to prevent disastrous action of Colorado parties, & the best efforts will be made to satisfy those claims. A meeting of directors is called for Friday to get authority to make mortgage, which will undoubtedly be placed in escrow with judgments, as suggested by you & agreed to by creditors; and we have every reason to believe the money will be raised shortly
368 after to pay those pressing claims. This done, the disposition is strong to provide means to start up work coming season, either as an operative company or by B. company. The matter of assessment work shall also be considered at proposed meeting. We believe now that creditors are disposed to *help* us pay them; that it will be done before the sixty days. With regards, &c.,

Your friend,
(Signed) L. B. EDDY.

Exhibit I.—R. H. B., examiner.

NEW YORK, *March* 14, 1882.

JOHN B. HENSLEE, esqr.

DEAR SIR: I thank you for your letter advising me about Annie and Robinson stock. I have five hundred shares of the former which

I bought last year in consequence of a telegram you sent here about it. I shall be obliged if you will inform me about its future development.

Everything looks gloomy with Brittenstene affairs. I have advanced all the money the company has had since last September, and had to borrow it at that. I gave the money to pay off Campbell's judgment the other day.

369 If I had the means I would pay off all the claims against the company, and first of all those held in Colorado.

There is no one here except myself who has done anything to help the company out of its difficulties, and my interest in its affairs is a small one. I don't own more than a thousand shares of the stock.

I do not look to see anything practical done by any one here, although they are all fertile in plans. Like the baseless fabric of a vision, they fade away into thin air.

Something must be done, and that very soon, with the company's property, or all the labor and money expended will be lost. For my part, I hate to see the present prospect that no work will be done in the spring and summer when so much could be done. Ward's suggestion, that we all thought here was too absurd to be entertained, seems the only thing to offer to investors. The parties with whom I was in communication last summer would not now have anything to do with the property, but I think I could personally raise the working capital on such a basis. You remember he said that the parties who would advance a working capital of fifty thou-

370 sand dollars, or rather pay it into the treasury, should have one-half of the capital stock of the company. This proposition would not be readily accepted here by those who hold the stock, but as they could do nothing themselves they will have to do something like it.

I am not doing anything particular now, as I have resigned my official position in the law department and would have the time to devote to making this thing a success. I believe I personally have influence enough in New York to raise the money. I might not be able to do all of it at once, but a proportionate amount of the stock might be taken up as fast as the money was paid into the treasury.

I would then expect to make some arrangement for the listing of the stock, pooling it for a year or two, and get a percentage of the profits of the sale of stock.

You and I could enter into an agreement by which we would divide the percentage upon the stock you would bring into the pool. With this done, I believe that the stock which the present owners would retain could be made very valuable. With no work going on, judgments being entered up against the company, and

371 no funds on *funds on* hand, the stock is almost valueless. It is quoted here every day in the newspapers at 25 cents per share.

Please think these matters over and give me your views. This

time I am not acting with any one else here; and if I undertook to do anything, would act solely for myself.

Yours respectfully, (Signed) RICHARD J. MORRISON.

Exhibit K.—R. H. B., examiner.

OFFICE OF BRITTENSTENE SILVER MINING COMPANY,
56 WALL STREET, NEW YORK,
NEW YORK, *September 7th*, 1882.

CHAS. SHEPPARD, esqr.

DEAR SIR: This circular is addressed to you as a stockholder in the Brittenstene Silver Mining Company for the purpose of securing your aid in the execution of an enterprise hereinafter mentioned, and in which you are interested to the amount of your stock.

The mining property of the company, situated in the county of Chaffee, state of Colorado, has been sold under execution
372 issued from a court of said state on a judgment obtained in the said court against the company.

The company, under the laws of Colorado, has the right to redeem the said property on or before the 10th day of December next, by payment of the amount of the judgment, with interest and costs. There is also other indebtedness of the company, due and payable, incurred in improving and developing the property to be liquidated.

A receiver of the company's property has been appointed in the state of New York in an action brought against the company by a creditor in the Supreme Court.

The total indebtedness of the company is shown in the accompanying statement.

It is necessary to resume and prosecute the development of the property.

In order to pay the indebtedness of the company, and to raise money to develop its mines, the board of directors presents to the stockholders the following plan, which it is hoped will meet with a favorable acceptance.

First. The Brittenstene Silver Mining Company to assign to the American Loan and Trust Co., No. 113 Broadway, New York, as trustee of an express trust, all the unissued and unsold stock of the company, 15,500 shares.

373 Second. The stockholders to assign to said trustees (for the uses of the trust) one-half of the stock by them severally held in the company; or, instead of such assignment, at their option, to pay to said trustees in money twenty-five cents per share on all the shares by them respectively held.

Such assignment or such payment to be made on or before the 15th day of October, 1882.

Third. The said trustees upon the receipt of said stock shall be authorized to sell the same at not less than the price of fifty cents per share. The said price may be advanced at any time by direction of the board of directors of the Brittenstene Silver Mining Co.

Fourth. The said trustees with the proceeds obtained as above provided shall as speedily as may be, 1st, pay and satisfy the judgment mentioned above; 2d, pay and satisfy all other just indebtedness of the company; 3d, and the remainder of the proceeds they shall pay to the company, to be used in working, improving and developing the mining property thereof, and be discharged from the trust.

And the said trustees shall keep and present a just and true account of all their transactions herein to the board of directors
374 of the Brittenstene Silver Mining Co

Your prompt co-operation in the plan proposed is earnestly solicited as absolutely necessary to save the property, the value of which has been materially enhanced by the expenditures already made and by increased railway and smelting facilities.

The directors have personally advanced moneys to carry on the work of development, and not one dollar has been received by them or by any officer for any purpose whatever.

It now remains for the stockholders to place the company on a firm foundation, and it is confidently hoped and believed you will make immediate response by signing one of the following agreements, and transmitting the same as now attached to the circular, on or before October 1st 1882, to the secretary of the company, M. J. Drummond, No. 68 Wall st., New York.

Yours respectfully,

(Signed) RICHARD J. MORRISON,
JOHN E. WHITE,
M. J. DRUMMOND,
L. B. EDDY,
E. P. WHITE,
PATRICK GLEASON,
JAS. E. CHANLER,
M. H. SIGERSON,
Board of Directors.

375 SEPTEMBER ——, 1882.

I, the undersigned, stockholder in the Brittenstene Silver Mining Company, hereby give my consent that the said company may assign to the American Loan and Trust Co., trustees named in the foregoing circular, the unissued and unsold stock of said company for the uses and purposes and on the conditions mentioned in said circular.

And in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I hereby agree to assign to the American Loan and Trust Co., trustees, one-half of all the shares of capital stock held by me in said Brittenstene Silver Mining Co., viz., one-half of shares, on or before the 15th day of October, 1882, upon the conditions and in accordance with the terms set forth in the said circular.

Name, ...
Address, ... [SEAL.]

SEPTEMBER ——, 1882.

I, the undersigned, stockholder in the Brittenstene Silver Mining Company, hereby give my consent that the said company
376 may assign to the trustees named in the foregoing circular the unissued and unsold stock of said company for the uses and purposes and on the conditions mentioned in said circular.

And in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I hereby agree to pay on or before the 15th day of October, 1882, in money to the American Loan and Trust Company, trustees, the sum of dollars, being the aggregate amount of twenty-five cents on each and every of the shares of stock by me held in said Brittenstene Silver Mining Co., in accordance with the terms and conditions set forth in said circular.

Name, ...
Address, ... [SEAL.]

Statement of Indebtedness of the Brittenstene Silver Mining Company.

J. W. Hinckley, moneys loaned			$500 00
P. Gleason,	do.	do.	275 00
R. J. Morrison,	do.	do.	6,600 00
J. C. Noyes,	do.	do.	500 00
John B. Henslee and others, for wages and supplies			4,750 00
William Porter Allen, assignee of George A. Tracy, for machinery			2,500 00
Mutual Trust Co., transfer agent			650 00
377 E. R. Howe, superintendent			241 58
Miscellaneous			1,000 00
Total			$17,016 50

Exhibit L.—R. H. B., examiner.

Dated New York, 1 Dec., 1882.

Received at Leadville, Colo., 11.02 p. m.

To JOHN B. HENSLEE: Bought right redemption Brittenstene as agent for friend at receiver's sale to-day. Can pay judgments; if you wish to retain interest & connection, shall require you to extend time to pay judgments. Ross & Coston, Buena Vista, will communicate with you.

(Signed) JNO. E. WHITE, *Agt.*

Exhibit M.—R. H. B., examiner.

NEW YORK, *Dec. 9th*, 1882.

Mr. JOHN B. HENSLEE.

DEAR SIR: Your night message of 8th rec'd. Your proposal was so unnatural that I have no option but for the law to take its course.

Yours truly, (Signed) JOHN E. WHITE, *Agent.*

378 *Exhibit N.*—R. H. B., examiner.

DENVER, COLO., *Dec. 15th*, 1882.

JOHN B. HENSLEE, esq.

DEAR SIR: Will you please send me a statement of the amount you claim from the Brittenstene S. M. Co., & the least amount you will take therefor for immediate cash, furnishing me with lawful assignment or releases? There must be some error about this Falkenan matter. Mr. Hamilton says Falkenan's bill was paid & he paid it.

Can you tell me anything about the St. Louis lode, why the annual work has not been done on that?

Very truly yours, (Signed) C. EDGAR SMITH.

I am authorized to settle all valid claims, but I find it somewhat difficult to determine what are valid.

Exhibit O.—R. H. B., examiner.

DENVER, COLO., *Jan.* 9, 1883.

JOHN B. HENSLEE, esq.

DEAR SIR: Your card rec'd. Mr. Robison must have some plats which will be useful. At all events I should like what he has. You will need to determine pretty quickly if you want the money
379 on the Crow judgment; otherwise I fear the result may disappoint you.

Yours truly, (Signed) C. EDGAR SMITH.

Exhibit P.—R. H. B., examiner.

(Copy.)

Sheriff's certificate of sale.

STATE OF COLORADO, *Chaffee county*, } *ss.*

I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of Lake county, I did, on the seventeenth day of June, 1882, between the hours of nine o'clock in the forenoon and the setting of the sun the same day, expose to public sale certain tracts or parcels of land described as follows, to wit: The mining claims known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Virginia tunnel site, the Alabama and Georgia, the Great Eastern and Great Western. All of said property is situated on the eastern slope of Grizzly or Chrysolite mountain, on the declivity towards Grizzly gulch, in Chalk creek mining district, Chaffee county, Colorado. For a more par-
380 ticular description, reference is hereby made to book 7, page 450, of the records of said county.

And that Jos. R. Crow bid the sum of $1,718.27 therefor, which being the highest and best bid, the said tract or parcel of land was struck off to him, the said Jos. R. Crow, subject to an execution in favor of Geo. M. Robison, and that he, the said Jos. R. Crow, will be entitled to a deed for said premises so sold to him on the 19th day of February, A. D. 1883, unless the same be redeemed according to law.

Given unto my hand and seal this 24th day of June, A. D. 1882.

(Signed) ROBERT RAY, *Sheriff.* [SEAL.]
By G. D. MERRIAM, *Deputy.*

In consideration of the sum of $1,718.27 to me in hand paid by Nelson & Noel, of ——, the receipt whereof is hereby acknowledged, I do hereby transfer, assign, and set over to the said Nelson & Noel $\frac{17}{33}$ of above amount, *his* heirs and assigns forever, all my rights, title, and interest in and to the above instrument, and the premises therein described.

Witness my hand and seal at Leadville, Colo., this 19th day of July, A. D. 1882.

(Signed) J. R. CROW. [SEAL.]

Witness: JNO. R. HENSLEE.

381 (Endorsed:) Filed for record June 27, 1882, at 10.50 a. m., and duly recorded in book 1 of liens, page 376; (signed) James H. Johnston, recorder. A true copy. (Attest:) R. H. Buck, examiner.

Exhibit Q.—R. H. B., examiner.

ST. LOUIS, 6—26, 1882.

JOHN B. HENSLEE, esq'r, Leadville, Col.

DEAR SIR: You draft vs. Brittenstene mines purchase at sheriff's sale presented & paid. We are in the dark as to what you have done in the matter & look for fuller information soon.

Yours, (Signed) NELSON & NOEL.

Exhibit R.—R. H. B., examiner.

ST. LOUIS, *Aug.* 12, 1882.

JNO. B. HENSLEE, esq'r, Leadville, Colo.

DEAR SIR: Your draft 610 paid. We hope this about ends
382 the outlay & will now depend on you to make some turn on the property. The sooner it can be done the better we will like it. Would like to get a little ahead on the bulere deal if possible & get our friends out.

Yours, (Signed) NELSON & NOEL.

Exhibit S.—R. H. B., examiner.

ST. LOUIS, *Nov.* 10*th*, 1882.

J. B. HENSLEE, esq'r, Leadville, Colo.

DEAR SIR: Your 2nd rec'd & noted. Your draft came duly to hand and was paid. Please wire us what Morrison does on receipt, and we will write you more fully. At present it seems to us, as we are already in it, there is no way to do but go ahead & do the assessment work or lose what we have put in. We are anxious to get our money back, and are depending on you. May be out there unless we hear something definite soon.

Yours truly, (Signed) NELSON & NOEL.

383 *Exhibit T.*—R. H. B., examiner.

ST. LOUIS, *Nov.* 21, 1882.

JNO. B. HENSLEE, esq., Leadville, Col.

DEAR SIR: Yours 18th rec'd & noted. The draft came to hand and was paid. Please write us fully about the personal property belonging to the mine. If we bo't this & it is worth $3,000 as you say, & would sell for $1,500, better see it declare a cash dividend & pay these assessments. We are getting tired. Write us about the personal property *on receipt.*

Yours truly,

(Signed) NELSON & NOEL.

Exhibit U.—R. H. B., examiner.

ST. LOUIS, 12—5, 1882.

JNO. B. HENSLEE, esq'r, Leadville, Colo.

DEAR SIR: We want to hold on to Brittenstene & do assessment work necessary. We were under impression from correspondence with you & *pay't made* to you that we owned a controlling in-
384 terest in the mines under judgment purchase. Is this correct? Also that we owned the personal property. How did it happen we did not get it? Yours,

(Signed) NELSON & NOEL.

Exhibit V.—R. H. B., examiner.

ST. LOUIS, *Dec'r* 15*th*, 1882.

JNO. B. HENSLEE, esq., Leadville, Colo.

DEAR SIR: Herein find sh'ff's c't'f. in matter of R. W. Evans *vs.* Brittenstene Mining Co., $1,000, dated June 10th last. Please remit us the am't & 10 p. c. int. from that time. We paid for this in full by your draft on us for $1,000. We wish you had bo't the right of

redemption for us. Please send us full statement of balance of judgments, amounts, &c., & when do so, as we may know when to expect and money back. This has been a bad business.

Yours truly,

(Signed) NELSON & NOEL.

Exhibit W.—R. H. B., examiner.

385 Dated ST. LOUIS, *Dec.* 22*d*, 1882.

To J. B. HENSLEE.

Hold on to property if possible & do necessary assessment work.

(Signed) NELSON & NOEL.

Exhibit X.—R. H. B., examiner.

ST. LOUIS, 12—23, 1882.

JOHN B. HENSLEE, esq., Leadville, Colo.

DEAR SIR: Your tel. saying had remitted for 1st cert. rec'd; also tel. to Nelson & Co. to send second one. We are glad White failed to put up on 2d one, and wire you now to hold property if possible & do necessary assessment work if any necessary to hold it, & if any lawing to be done we will go out there & take Gen'l J. B. Henderson on with us; this thing appears rather mixed to us.

Yours, (Signed) NELSON & NOEL.

Exhibit Y.—R. H. B., examiner.

386 ST. LOUIS, 12—25, 1882.

JOHN B. HENSLEE, esq., Leadville, Col.

DEAR SIR: Yours and remittance received, & we wire you "Matters satisfactory; hold on to property; we will employ att'y if necessary." We *have* not fully understood this matter at this distance, & I have left it all to you, and if it turns out as we have hoped for it will add materially to our "Christmas" pleasure. We did not go into it for 10 p. c. int.; could do much better than any int. here. If we can hold the property *Henderson* (?) company will take it at good price, & we can get him to go out there if necessary at any time.

Yours, (Signed) NELSON & NOEL.

Exhibit Z.—R. H. B., examiner.

ST. LOUIS, 12—26, 1882.

JNO. B. HENSLEE, Leadville, Col.

DEAR SIR: If any other parties *now* have the right of redemption over us, how would it do to buy them out & thus perfect *our*
387 title? If same could be done & you think necessary & advisable, we would do it if not too much cash required.

Yours, (Signed) NELSON & NOEL.

Exhibit A 1.—R. H. B., examiner.

Dated ST. LOUIS, Mo., — 30, 1882.

To JNO. B. HENSLEE: We mail certificates to-day. Keep us advised.

(Signed) NELSON & NOEL.

Exhibit B 2.—R. H. B., examiner.

ST. LOUIS, *Jan'y 16th*, 1883.

JOHN B. HENSLEE, esq'r, Leadville, Colorado.

DEAR SIR: As we have not heard from you in some time in regard to the enquiries made by Gen'l Henderson, we write to ask a report of progress on the Brittenstene matter. We trust it may be favorable, and have no doubt but that you are doing all that can be done under the circumstances. Drop us a line occasionally
388 as to how it is getting along.

Yours truly, NELSON & MOEL.

Exhibit C 3.—R. H. B., examiner.

ST. LOUIS, *Febr'y* 12, 1883.

JNO. B. HENSLEE, esq'r, Leadville, Colo.

DEAR SIR: Yours 8th rec'd & contents noted. We are unprepared to say what we would do, but as you are on the ground and understand the situation we feel disposed to do anything you would advise. We are leaving the whole matter with you, & will fix bond when rec'd. We enclose map of land, which we offer for sale at $1.25 per acre. Will pay you good com. in case of sale.

Yours truly,

(Signed) NELSON & NOEL.

Exhibit D 4.—R. H. B., examiner.

ST. LOUIS, *Feb'y 13th*, 1883.

JNO. B. HENSLEE, esq'r, Leadville, Colo.

DEAR SIR: We enclose bond duly signed by Streeter & ourselves. We of course know little what to do in the matter of accepting compromise on our claim, but feel disposed to do whatever
389 you advise for the best. Personally we feel disposed to hold on, as from what you have written we think we have a good case, and we believe the property is valuable, if our side gets it.

Very truly yours,

(Signed) NELSON & NOEL.

Exhibit E 5.—R. H. B., examiner.

ST. LOUIS, 2—14, 1883.

JOHN B. HENSLEE, esq., Leadville, Col.

DEAR SIR: We enclose written authority for Robt. Rankin to sign

his name to the bond. Please do so and attach the letter to the bond or return to us for safe-keeping. We expect you to get all the others interested to sign the bond also. Please let us know who else is on it. If we could get a reasonable compromise in *cash*, or *cash* and stock, would rather settle than have a law suit. Let us know what could be done.

(Signed) NELSON & NOEL.

Exhibit F 6.—R. H. B., examiner.

ST. LOUIS, 3—9, 1883.

JOHN B. HENSLEE, esq., Leadville, Colo.

390 DEAR SIR: We can buy a lot of Greene co. *so as* to sell at 75 per cent. on am't now due. Some man in Syracuse own lot of Greene and ask 80c., and have been offered here—*not* to us. We hope to hear something favorable on the Brittenstene matter soon from you. Yours, &c.,

(Signed) NELSON NOEL.

Exhibit G 7.—R. H. B., examiner.

DEC. 2.

MR. JOHN E. WHITE, New York.

DEAR SIR: Your dispatch rec'd. As the company's right of redemption expires on 9th inst. it (the company) will have no right to do the assessment work for 1882 ($800) after that.

Present owners of judgments and certificates have p'd for assessments on Quincy and Virginia, and have to pay for balance on 9th. If you pay the $800 assessments by next Saturday you can have a fair chance with them. The company p'd the assessment on the tunnel site, but it was found legally necessary to do $100 worth

391 of work on each of the other 8 claims.

Yours truly,

(Signed) JOHN B. HENSLEE.

Exhibit H 8.—R. H. B., examiner.

NEW YORK, *Oct.* 22, 1882.

JOHN B. HENSLEE, esq.

MY DEAR SIR: I have just written you a letter asking you to advise Brittenstene and others to act under the plan proposed for the reorganization of the affairs of the Brittenstene Co.

This is for the best interests of all, because nothing can be done to save the property until the stockholders agree to their part of the plan. Very few of them have yet done so. No one can loose anything by signing the agreements. They will not be in any worse position than they are now, if the plan fails. I have previously, you must admit, have had nothing to say about my associates here; when I think some of them have had considerable criticism to make concerning me.

392 I now deem it right to say to you one or two things, not for the purpose of prejudicing you against any one, but solely for the purpose of informing you how I have striven to help this company.

In the first place, my holdings of stock for a year and a half past has not exceeded 2,000 or 2,500 shares, so my interest has been a small one.

Secondly. It was through me, and to help *me*, that Mr. Dennis Ryan loaned $20,000 to White and Drummond to complete the purchase of the property.

Thirdly. It was I alone of the directors of the company who went to Colorado in July last and brought a couple of friends for the purpose of getting them interested. Several of the directors promised to go, particularly Mr. John E. White; but not one besides myself went. This trip cost me several hundred dollars, of which I have never got a penny from the company.

Fourthly. When the company was getting in a bad plight again, last October, I went to some friends here, represented what I thought of the property, and again went to Colorado with W. S. Ward
393 for the purpose of helping the company by getting capitalists interested. You know that both these trips were unsuccessful. I had to pay my expenses again on the second trip. No director nor the company ever gave me a dollar. I was obliged to pay five hundred dollars, as one-half of Mr. Ward's fee, for examining the property, and another five hundred dollars to Mr. Porter, who, about the same time, examined the property for me. This report was made confidentially to supplement the other.

I returned to New York unsuccessful. The property was then about to be sold, and I borrowed and loaned to the company sixty-six hundred dollars.

When it came lately to the consideration of a plan to extricate the company from its difficulties, the directors were, at least some of them, in favor of naming individual trustees to take charge of the reorganization of the company's affairs, and suggested myself and others. I foresaw that objections might arise to this; that stockholders, who naturally would feel angry because the com-
394 pany's affairs had not been prosperous, might think that some harm might be done them, or that some job was being arranged to trick them.

I advised that it would be best to get some bank or financial firm, or trust co., to take charge of the stock and money under the proposed plan of organization. I told the directors that stockholders would be apt to entrust both more readily to a bank or trust co. than to any individuals, however upright, particularly when they had already been concerned in the management of the company's affairs. The directors then asked me to find out where we could get a bank or trust co. to take hold. We could not get the National Trust Co., because we already owed them $650 for the transfer of stock last year, and for which they have commenced an action.

I went to the American Loan & Trust Co., which had just been organized, which is a responsible company, and asked them to do the work as reasonably as possible. They agreed to do the work connected with the trust for one thousand dollars, five hundred dollars payable immediately and five hundred dollars payable in six months. I reported this to a meeting of the board of
395 directors, held at my house early in September, at which the form of the circular letter prepared by me was read and approved. The directors, after considerable discussion, assented to a trust co. taking charge of the trust.

The directors agreed as follows to make up the five hundred dollars necessary for a first payment to the American Loan and Trust Co.:

Patrick Gleason	$100	
E. P. White	100	or $200.
John E. White	100	
R. J. Morrison	100	

Mr. Drummond at that meeting would not agree to loan the company anything for such a purpose or any other. He thought individual trustees could do it without cost. The above directors were to loan the money within a day or two. Mr. Gleason sent me his money next day. I tried for two weeks to get both Whites to pay the money, *but they never did.* Mr. Drummond I finally got to advance $100; and I had to borrow for myself $300, which I advanced to the company. The circulars were delayed in issuing
396 to eastern stockholders nearly three weeks in consequence of this failure of the directors to fulfill their promises. While this money was being collected your letters and telegrams about assessment work reached me. I did not have the money at the moment; but as soon as I raised the money to pay the trust co., I personally advanced one hundred dollars to pay for that work, and sent it to you. Come what may, it is the last money I can advance. My circumstances have been greatly affected by my attempts to help the Brittenstene Co., and I am daily pressed for money which I borrowed to help the company.

This long statement is necessary to show you that, however tall may be the promises of individual directors here about doing anything for the company, you need not expect ever to see them do anything.

They are remarkably fertile with suggestions; but when it comes to do anything, the whole burden has always been left on me. If I should ever succeed in getting any one to really take hold and do something, I expect them to act the dog in the manger fashion, and want to grasp everything or make exorbitant demands.

397 For the last two years no one here has given a dollar to company but me, except in the above instances. I am heartily tired of the whole business, and shall never again have anything to do with any mining company unless the directors are men of large means.

In sending out the company's circular, I thought it advisable to send the letter signed by me accompanying it, and forms of agreement to show the stockholders that they all could partake of the advantages of the plan by getting some of the stock at the low rate of fifty cents per share; and also that it was not a "hole in the corner" affair, by which some capitalists expected to take the whole block of stock from the trust company.

Now, to be frank with you, I state what my expectations of success are based upon. They are slender, perhaps; but it is the only way out. My friend Mr. Davis Ryan, the vice president of the Bassick Co., whose property is at Querida, near Rosita, Colorado, and is also a director in the Horn Silver Co., holds the stock of White and Drummond as collateral for moneys advanced them for the
398 purchase of the property. He could readily take up all this stock which the stockholders might surrender if he wished to among his friends and for himself. I think this is more than he could be induced to do, and I scarcely think it wise to attempt it. I wrote to him a few weeks ago to St. Paul, Minn., stating briefly the condition of affairs, advised him to help us out, and asked him to induce his friends to take some of the stock. I also sent him a copy of the circular and accompanying letter and form of agreement. He wrote to me saying he would go to Colorado shortly and would try to look at the property. He said he had a good opinion of it, and believed we ought to be able to save it. He said he could not advise his friends on the subject unless he personally inspected the mines. He said he would go there with me and give me any assistance he could consistently with his duty to them. He came to New York about ten days ago on private business, and then I talked the subject all over with him. He wanted me to bring a couple of friends with me who might go into the affair
399 with money if he approved. I have found it extremely difficult to get such persons, but may do so. Mr. Ryan left, promising to telegraph me in Chicago when he would be ready to go. I agreed to go with him if necessary. I think a plan embracing him would be more likely to be successful if I went. I am ready to go, but do so at a considerable injury to my professional business. I have since received from Mr. Ryan a telegram stating he would leave Chicago for St. Paul last Tuesday, and would notify me when he could go to Colorado. He will probably be at the Bassick mines, at Querida, Col., in a week or ten days. If I can go out with him, I shall do so; if I do, I want your co-operation; if not, I wish you to see Mr. Ryan, and get him to go to the mines. Let him see, also, the Murphy mines, and any other good ones in the camp. My plan is this: If Mr. Ryan thinks well of the property, let him take ten or fifteen thousand dollars' worth of the stock from the trust company and pay for it. I will then get creditors of the company here, including myself, to take stock at same rate, in
400 lieu of cash, and sell five thousand dollars' worth of the stock besides.

If he takes $15,000, either for himself or friends, and I would do what I say—i. e. $15,000 more—this would be the result:

1st. $30,000 would be paid, or its equivalent, all the judgments and debts would be wiped out, and ten to thirteen thousand dollars would be in the treasury.

2d. The other 40,000 shares could be taken up, or $20,000 subscribed, through the immediate energetic action of yourself and friends and all other stockholders.

I am quite sure that, with the debts out of the way and some money in the treasury, there would be a scramble among the stockholders to get the rest of the stock at fifty cents per share.

I do not believe we ought to resume work until nearly all the $50,000 should be obtained. All this can be accomplished by getting Mr. Ryan to move first. He is an experienced miner, wealthy and generous. He is one of the best and most reliable men I have ever known, and quite capable of organizing this business for us all in the most satisfactory manner. I wish you to act with me
401 in this matter. The directors know very little about my views concerning Mr. Ryan in connection with this matter, and I don't wish any one but you to know anything about them until we have accomplished success. If I can't go out, I wish you would find out, both in Denver and Rosita, when Mr. Ryan arrives, and I will telegraph you and him introducing you to each other. He will go to Charpiot's, Denver. I hope, for the sake of all of us and our representations, we may be successful in our efforts.

Yours very truly,
(Signed) RICHARD J. MORRISON.

Exhibit J 9.

STATE OF COLORADO, } ss.
Chaffee county, }

I, Robert Ray, sheriff of said county, do hereby certify that by virtue of a writ of execution to me directed from the County Court of said county, I did, on the nineteenth (19) day of August, 1882, between the hours of nine o'clock in the morning and the setting of the sun the same day, expose to public sale certain tracts or
402 parcels of land described as follows, to wit:

The lode mining claims known as the Lilly, the Virginia, the Rebecca, the Highland, the Bob Lee, the Quincy, the St. Louis, the Morning Star, the Alabama, the Georgia, the Great Eastern and the Great Western, also the Virginia tunnel site, all of said lodes being situated in Chalk creek mining district, Chaffee co., Colo., and belonging to the Brittenstene Silver Mining Company, as appears in book 7, page 450 of the records of Chaffee county, Colorado, to which reference is hereby made.

And that Griffith Evans did, in 13 separate and distinct bids, bid the total and aggregate sum of $1,049.88-100 therefor, which being the highest and best bid, the said tracts or parcels of lands were struck

off to him, the said Griffith Evans, and that he, the said Griffith Evans, will be entitled to a deed for said premises so sold to him on the 19th day of May, A. D. 1883, unless the same be redeemed according to law.

Given under my hand and seal this 19th day of August, A. D. 1882.

(Signed) ROBERT RAY, *Sheriff*, [SEAL.]
By G. D. MERRIAM, *Deputy*.

(Endorsed:) No. 16,553; sheriff's certificate of sale to
403 Griffith Evans, of St. Elmo; in the matter of R. W. Evans & Bro. *vs.* The Brittenstene Silver Mining Company. State of Colorado, Chaffee county, *ss.*—I hereby certify that the within instrument was filed for record on the 23rd day of Aug., A. D. 1882, at 3.30 o'clock p. m., and duly recorded in book 1 of sheriff's cert. of sale, page 1; (signed) James H. Johnston, recorder, by W. H. Kellogg, deputy; fees $1.25, paid.

Exhibit K 10.—R. H. B., examiner.

Nelson & Noel.
O. H. Simons.
James Streeter.
Wm. N. & J. R. Locker.

(Endorsed:) 1126; John E. White, ag't, *vs.* Jos. E. Crow et als.; depositions on the part of def'ts; opened, pub., and filed Jun. 8, 1883; (signed) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 13th day of June, A. D.
404 1883, the same being one of the regular juridical days of the May term, A. D. 1883—present: the Honorable George W. McCrary, circuit judge, and the Honorable Moses Hallett, district judge—the following further proceeding was had in said court and in said cause, to wit:

For an Injunction and other Relief.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW et al. } In Chancery. 1126.

At this day comes the said complainant by C. Edgar Smith, esq., his solicitor, and the said defendants by L. N. Buck, esq., his solicitor, also come; and this cause now coming on for final hearing upon the bill of complaint herein, the answer of the said defendant, the replication thereto, and the evidence taken in support thereof; and the court having heard the evidence herein and the arguments of counsel, doth take the same under advisement.

And afterwards and on the same day, to wit, the 13th day of June, 1883, the following further proceeding was had and entered
405 of record in said court and in said cause, to wit:

For an Injunction and other Relief.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW et al. } In Chancery.

On motion of defendants, by counsel, it is ordered that L. C. Nelson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons be made parties defendants to this suit, and that this order be entered now as of and for the 23rd day of February, A. D. 1883.

And afterwards and on, to wit, the 28th day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court—present: the Honorable Moses Hallet, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

For an Injunction and other Relief.

JOHN E. WHITE, agent,
vs.
JOSEPH R. CROW, JOHN B. HENSLEE,
406 GRIFFITH EVANS, ROBERT RAY, sheriff of } In Chancery.
Chaffee county, Colorado, L. C. NELSON,
H. M. NOEL, J. L. LOKER, W. N. LOKER,
JAMES STREETER, and O. H. SIMONS.

This cause came on to be heard at this term of the court and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That as to the defendant Robert Ray, sheriff of Chaffee county, Colorado, the complainant's said bill of complaint and amended bill of complaint be, and the same are hereby, dismissed.

That the defendants L. C. Nelson, H. M. Noel, W. N. Loker, J. R. Loker, James Streeter, and O. H. Simons do within thirty days from the date of the entry of this decree refund or tender to the said complainant or his counsel herein, C. Edgar Smith, the sum of $3,253.90, being the amount of money received by the said defendants from the complainant in partial payment of the several demands, liens, & judgments against the property known as the Brittenstene mining property, with interest thereon at the rate of ten per cent. per annum.

407 That if said defendants fail to pay or tender said sum of $3,253.90 to said complainant or his said counsel as aforesaid within said 30 days, then said complainant, John E. White, agent, may pay to the said defendants, L. C. Nelson, H. M. Noel,

W. N. Loker, J. R. Loker, James Streeter, and O. H. Simons, the amount of the sheriff's certificate of sale to Joseph R. Crow, and interest thereon, and the amount remaining unsatisfied of the Griffith Evans judgment and interest thereon, being the remainder of the liens against said Brittenstene property, owned by the said defendants; and when the said complainant shall have paid said remainder of said liens to the said defendants as aforesaid, said complainant shall have a quit-claim deed from the said defendants for such interests as they have or may have acquired under said liens, judgments and certificates of sale, in and to said Brittenstene property, described as follows, to wit: the Lilly lode, the Virginia lode, the Rebecca lode, the Highland lode, the Bob Lee lode, the Quincy lode, the St. Louis lode, the Morning Star lode, the Virgnia tunnel site, the Alabama & Georgia lodes, and the Great Eastern and Great Western lodes, all in Chalk creek mining district, in the county of
408 Chaffee and state of Colorado, together with the rights, privileges, and appurtenances thereunto belonging or appertaining.

That so much of said complainant's bill and amended bill of complaint as seeks to set aside the sale under the judgment of Joseph R. Crowe be, and the same is hereby, dismissed without prejudice to the rights of complainant to maintain another bill for the same cause in any court of competent jurisdiction.

That complainant's said bill of complaint and amended complaint be, and the same is hereby, dismissed as to the defendants Joseph R. Crow and John B. Henslee;

That said complainant's bill and amended bill of complaint, except as to the portion hereinbefore dismissed without prejudice, upon the payment or tender by said defendants of said sum of $3,253.90, hereinbefore decreed to be paid by them, be, and the same is hereby, dismissed as to all said defendants, and the relief prayed for in said bills be, and the same is hereby, denied; and

That the preliminary injunction heretofore granted in this action be, and the same is hereby, dissolved; and it is ordered that
409 no injunction be allowed the complainant for anything in his said bill alleged, and that the complainant is allowed to withdraw from the court the balance of the fund paid into court by complainant, amounting to ($2845.93) twenty-eight hundred and forty-five dollars and ninety-three cents, and the clerk of this court is hereby ordered to pay said $2845.93 to C. Edgar Smith, the counsel for complaimant.

From which decree the complainant prays an appeal to the Supreme Court of the United States, which prayer is hereby granted on filing bond in the sum of five hundred dollars within three months from the date of entering this decree, security to be approved by the judge of this court.

And afterwards and on the same day, to wit, the 28th day of October, A. D. 1883, the following further proceeding was had and entered of record in said court and in said cause, to wit:

T

Bill for Injunction and other Relief.

JOHN E. WHITE, agent,
1126.] *vs.* } In chancery.
JOSEPH R. CROW et al.

410 Ordered that the clerk of the court draw from the registry of the court twenty-eight hundred and forty-five dollars and ninety-three cents, ($2845.93,) being the balance of the amount therein deposited to the credit of the court in the above-entitled cause.

And afterwards and on, to wit, the 26th day of July, A. D. 1883, at chambers, before the Honorable Moses Hallett, district judge, the following further proceeding was had and entered of record in said court and in said cause, to wit:

For an Injunction and other Relief.

JOHN E. WHITE, agent,
vs. } In chancery.
JOSEPH R. CROW.

At this day comes the complainant by C. Edgar Smith, his solicitor, and on his motion it is ordered that he have leave to withdraw from the files of this cause three several original deeds, to wit, one of the Brittenstene Silver Mining Company to J. Van Vechten Olcott, receiver; one from J. Van Vechten Olcott, receiver, to John E. White, ag't; and one from the Brittenstene Silver Mining Company to John E. White, agent, and to retain the same.

411 And afterwards and on, to wit, the 27th day of September, A. D. 1883, came again the said complainant, by his solicitor as aforesaid, and filed in said court and in said cause his bond in appeal.

And the said bond in appeal is in words and figures as follows, to wit:

412 THE UNITED STATES OF AMERICA,
District of Colorado.

Know all men by these presents, that Henry B. Thalkeimer and Morell F. Ufford, as sureties, are held and firmly bound unto Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons in the full and just sum of five hundred dollars, to be paid to the said parties, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at the May term, A. D. 1883, of the Circuit Court of the United States for the district of Colorado, in a suit pending

in said court between John E. White, agent, plaintiff, and Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons, defendants, judgment was rendered against the said John E. White, agent, and he having* proved and been allowed an appeal from said decree to the Supreme Court of the United States, and a citation directed to the said Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. L. Loker, W. N. Loker, James Streeter, and O. H. Simons, citing and admonishing them to be and appear at a Supreme Court of the United States to be held at Washington on the eighth day of October next:

Now, the condition of the above obligation is such, that if the said John E. White, agent, shall prosecute said appeal to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

(Signed) HENRY B. THALKEIMER. [SEAL.]
MORELL F. UFFORD. [SEAL.]

Approved Sept. 27th, 1883.

(Signed) MOSES HALLETT, *Judge.*

413 *Justification.*

UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

Henry B. Thalkeimer and Morell F. Ufford, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate and personal property the sum below set opposite his name, that is to say: As to Henry B. Thalkeimer, one thousand dollars; as to Morell F. Ufford, one thousand dollars over and above all his just debts and liabilities, and in property subject to levy and sale upon execution.

(Signed) HENRY B. THALKEIMER.
MORELL F. UFFORD.

Subscribed and sworn to before me, at Denver, this 27th day of September, A. D. 1883.

(Signed) EDWARD F. BISHOP, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

This bond acts as a supersedeas.

[SEAL.] Attest: (Signed) EDWARD F. BISHOP, *Clerk.*

(Endorsed:) Gen. No. 1126. Circuit Court of the United States, district of Colorado. John E. White, agent, *vs.* Joseph R. Crow et al. Bond, $500. Filed this 27th day of Sept., A. D. 1883. Signed, Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk.

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*Obtained a writ of error to reverse the judgment of the said court, or having proved and been allowed an appeal from said decree to the Court of the United States.

414 And afterwards and on, to wit, the 28th day of September, A. D. 1883, came again the said complainant, by his solicitor as aforesaid, and filed in said court and in said cause his citation upon said appeal, with proof of service thereof.

And the said citation is hereto next attached, to wit:

415 THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. C. Loker, James Streeter, and O. H. Simons, greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the Court of the United States, wherein one John E. White, agent, is plaintiff, and Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. C. Loker, James Streeter, and O. H. Simons are defendants, to show cause, in any there be, why the judgment rendered against the said plaintiff on appeal, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the District Court of the United States for the district of Colorado, this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-three.

MOSES HALLETT,
Judge.

416 *Proof of service.*

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss.*

On this 28th day of September, A. D. 1883, personally appeared before me, the subscriber, a clerk of the District Court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Markham, Patterson & Thomas, solicitors or of counsel for defendants, by leaving said copy at the office of Markham & Patterson, in the city of Denver, with E. A. Clark, a clerk of said Markham & Patterson, who was in charge of said office; that I so delivered said copy on this 28th of Setpember, 1883.

C. EDGAR SMITH.

Sworn to and subscribed before me this 28th day of September, A. D. 1883.

EDWARD F. BISHOP, *Clerk.*
By F. W. TUPPER,
Deputy Clerk, U. S. Dist. Court.

(Endorsed:) Gen. No. 1126; Circuit Court of the United States, district of Colorado; John E. White, agent, plaintiff in error, *vs.* Joseph R. Crow et al., defendant in error; citation; filed in Circuit Court of the U. S. this 28th day of Sept., A. D. 1883; Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk.

417 And on the same day the said complainant filed his præcipe for record herein, to wit:

UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

In the —— Court of the United States for the district of Colorado.

J. E. WHITE, ag't, plaintiff, }
vs. }
CROW et al. defendants. }

The clerk will issue a writ of appeal in the above-entitled cause, directed to ———, for service upon ———; bill & exhibits; answer; all depositions; everything except affidavits & motion on injunction, —— and returnable.

(Signed) C. EDGAR SMITH,
Attorney for Compl't,
Room 1, McClelland block, city.

To EDWARD F. BISHOP, clerk.

(Endorsed:) Gen. No. 1126; Circuit Court of the United States for the district of Colorado; White, agent, *vs.* Crow et al.; præcipe for record; filed this 28th day of Sept., A. D. 1883; (signed) Edward F. Bishop, clerk; C. Edgar Smith, compl't's attorney.

418 UNITED STATES OF AMERICA, } *ss.*
District of Colorado, }

I, Edward F. Bishop, clerk of the Circuit Court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court, and in a certain cause lately in said court pending, wherein John E. White, agent, was complainant, and Joseph R. Crow et al. were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this — day of ——, A. D. 188—.

EDWARD F. BISHOP,
Clerk.

Clerk's fees: Preparing manuscript, 735 folios and cer., $73.85; paid by appellant.

(Endorsed on cover:) Colorado; C. C. U. S.; No. 1224; John E. White, agent, appellant, *vs.* Joseph R. Crow, John B. Henslee, Robert Ray, sheriff, Robert Rankin, L. C. Wilson, H. M. Noel, J. C. Loker, James Streeter and O. H. Simons; filed 4th December, 1883.

IN THE

Supreme Court

OF THE

UNITED STATES.

Appeal from a Decree of the U. S. Circuit Court. For the District of Colorado. To the

OCTOBER TERM, 1883

JOHN E. WHITE, Agent,

Appellant.

vs.

JOSEPH R. CROW, *et al*,

Appellees.

Statement, Argument and Brief for Appellant.

C. EDGAR SMITH,
Attorney for Appellant.
L. S. DIXON,
Of Counsel.

Colorado Printing Co., Denver.

110-83

IN THE

SUPREME COURT

OF THE

UNITED STATES.

APPEAL FROM A DECREE OF THE U. S. CIRCUIT COURT, FOR THE DISTRICT OF COLORADO.

OCTOBER TERM, 1883.

JOHN E. WHITE, Agent,
Appellant,

vs.

JOSEPH R. CROW,
JOHN B. HENSLEE,
GRIFFITH EVANS,
ROBERT RAY, Sheriff,
ROBERT RANKIN,
L. C. WILSON,
H. M. NOEL,
L. T. LOKER,
W. H. LOKER,
JAMES STREETER,
O. H. SIMONS,
Appellees.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

A bill was filed in the U. S. Circuit Court of Colorado, by the Appellant against the Appellees, to remove clouds from and to quiet the title to certain mining property in Chaffee county, Colorado, which theretofore had been owned by the Brittenstene Silver Mining Company, a

corporation organized under the laws of New York State.

The bill sought to impeach a certain pretended judgment purporting to have been recovered by one Joseph R. Crow, in the County Court of Lake County, Colorado, on the 13th day of January, 1882, and a transcript thereof, filed in the Recorder's office of said Chaffee county, on the 17th of January, 1882, and a sale of the property of the defendant thereunder, by the Sheriff of said Chaffee County on the 17th of June, 1882, and a certificate of sale issued thereon by the said Sheriff to the said Joseph R. Crow, who was the purchaser at said sale.

It also attacked a certain pretended sale of the same property to a purchaser, one G. Evans, on the 19th day of August, 1882, and a pretended certificate of purchase issued thereon to said G. Evans by said Sheriff of Chaffee county.

The bill maintains that the said Crow judgment is fraudulent, null and void, by reason of the fact that it purports to be a judgment *in personam* against a non-resident corporation, and that the complaint did not allege facts sufficient to give the Court jurisdiction therein, and because said judgment was rendered four days after the service of a summons against a non-resident corporation, on a person who was an agent only to receive said service, but who had no other or more extensive authority to represent said defendant corporation and yet who, notwithstanding, and without right or authority in the premises, went into Court four days after said service, and before time for appearance and answer, and confessed a judgment against said non-resident corporation. No one having appeared for it, and no warrant of authority to any one to represent said non resident corporation defendant, appearing of record in said action, the Court was utterly without authority to render such judgment, which is on

its face a mere nullity, of no force or effect as a judgment, and *coram non judice.*

The bill also maintains that the pretended sale of the property in question to one G. Evans, on the 19th day of August, 1882, by the Sheriff of Chaffee county, Colorado, was without any warrant of authority in law, was null and void, and created only an apparent lien on the said property, by reason of the fact that this sale was upon the same judgment as a former sale of the 10th of June, 1882, that it purported to sell the same identical property, and that all the right, title and interest of the defendant in said property had been previously sold on an elder judgment,—*viz,* that of George M. Robison, which sale took place on July 8th, 1882, and at the time of the sale of the 19th of August, 1882, nothing remained belonging to the defendant to be sold.

Certain proceedings were had in the Supreme Court for the city and county of New York, against the Brittenstene Silver Mining Company, under which a Receiver was duly appointed and the said property conveyed by deed from the Brittenstene Silver Mining Company to the said Receiver, one J. Van Vechten Olcott.

This deed was filed for record in Chaffee county, Colorado, on the 13th day of November, 1882.

On or about the 1st day of December, 1882, the said Receiver, under the proceedings mentioned, sold the property in question at public Judicial Sale in New York City to the Appellant, who received deeds of the said property both from the said Receiver and from the said Brittenstene Silver Mining Company.

These deeds were filed for record in the Recorder's office of Chaffee county, Colorado, on the 18th day of December, 1882.

At the time of the Appellant's said purchase there were certain liens against the said property existing by virtue

of certain judgments, against the Brittenstene Silver Mining Company, in Chaffee county, Colorado, and Sheriff's sales under those judgments.

The sales took place in the following order:

First—A sale to G. Evans, one of the execution creditors, on June 10th, 1882, for the bid of $1000, the Sheriff issuing thereon a certificate of purchase to G. Evans.

Second—A pretended sale to Joseph R. Crow, execution creditor, June 17th, 1882, for the bid of $1718.27, the Sheriff issuing thereon a certificate of purchase to Crow.

Third—A sale to George M. Robison, execution creditor, on July 8th, 1882, for the bid of $466.55, the Sheriff issuing a certificate of purchase thereon to Robison.

Fourth—A sale to G. Evans, one of the execution creditors, on August 19th, 1882, for the bid of $1049.88, the Sheriff issuing a certificate of purchase thereon to G. Evans.

The No. 1 sale was on a judgment recovered in the County Court of Chaffee county, for about $2000, against the Brittenstene Silver Mining Company, in favor of R. W. Evans and G. Evans.

The No. 4 sale was a second sale of the same property on the same judgment, in favor of R. W. Evans and G. Evans.

The No. 2 sale was on a pretended and fraudulent judgment, *in personam* recovered by one Joseph R. Crow, in the County Court of Lake county, on the 13th day of January, 1882. A transcript of this pretended judgment was filed in the recorder's office of Chaffee county, on January 17th, 1882.

The No. 3 sale was on a judgment recovered in the County Court of Lake county, on the 6th day of February, 1882, in favor of George M. Robison. An attachment was made in this case on January 13th, 1882, and the certificate

of levy was filed in Chaffee county recorder's office on the 20th day of January, 1882.

The certificates of purchase issued by the Sheriff in No. 1 and No. 2 sales recited that "the land was struck off * * * subject to an execution in favor of George M. Robison," the execution creditor and purchaser in the No. 3 sale.

See Ex. E., p. 64, etc., and Ex. B., p. 57, etc.

On December 6th. the appellant being in New York City, telegraphed C. Edgar Smith, an attorney in Denver, to proceed to Leadville and confer with one John B. Henslee, with reference to the Brittenstene property, and the claims against the said property.

Smith sought to obtain from Henslee such evidences of the claims as would justify him in paying Henslee, who offered if Smith would pay him $6000, to clear off all the debts against the property.

Smith was willing, and offered to do this if Henslee would present to him such evidences of the debts, judgments, etc. as would serve Smith as vouchers for the same.

But Henslee was unable to produce or present to Smith any evidences of the debts or assignments of judgments or certificates of sale, and Smith therefore declined to pay Henslee any money on the said claims.

Smith thereupon proceeded to Buena Vista, the county seat of Chaffee county, and saw the Sheriff, who gave him a memorandum of the different sales, with the date of same, and told him that the senior judgment was that of George M. Robison.

On the 10th day of December, 1882, Smith paid the Sheriff the redemption money under the No. 1 sale of the 10th of June, 1882, and received from the Sheriff a certificate of said redemption.

Smith then examined the records of the County Court in Lake county, and finding the judgment in favor of said Crow, on which the No. 2 sale was made, to be on a personal claim of said Henslee, who was at the time the agent of the Brittenstene Silver Mining Company, to receive service of process in the State of Colorado; and that Henslee had assigned or pretended to assign his claim or pretended claim to said Crow, on the 4th day of January, 1882, and conspired with Crow to procure said judgment; that Crow, in pursuance of said fraudulent conspiracy, had caused suit to be brought against the Brittenstene Silver Mining Company; that Henslee had been served with the summons on the 9th day of January, 1882; that said summons required the defendant to appear and answer within ten days of said service; that no officer or agent of the defendant was in Colorado at the time, or had knowledge of said action; that said Henslee, without any authority, and without the knowledge of the officers of said defendant, with transparent, fraudulent purpose, on the 13th day of January, 1882, four days after the service of summons on him, and before time for appearance and answer, went into court with the attorneys of his confederate, Crow, and fraudulently confessed judgment against the Brittenstene Silver Mining Company, in favor of Crow; that the complaint in said action nowhere alleges that the defendant was a corporation.

That it nowhere appeared in the complaint, or in the summons, or in the return of the Sheriff on the summons, that the defendant was a corporation, or was doing business in the State of Colorado.

That it nowhere appeared in the record of the court, or on the docket thereof, that the defendant was a corporation, or was doing business in the State of Colorado, or that there was any appearance of any attorney for the defendant, or any warrant of attorney to authorize the said Henslee to

waive the defendant's right allowed by the law and the Constitution of the State of Colorado, to appear in said action, or any warrant of attorney authorizing the said Henslee to confesa a judgment for any amount against the defendant.

That by reason of the foregoing, the court had exceeded its jurisdiction in entering up a judgment before the said ten days had expired, and that said judgment, so procured, was a fraudulent and void judgment, and that the transcript of said judgment, filed in Chaffee county, created only an apparent lien against the property of the defendant therein, and the sale pursuant to such a judgment was an unauthorized and void sale, and conferred, in fact, no right whatever upon the collusive purchaser, Crow. Finding these facts, Smith reported them with all expedition to the Appellant in New York, and subsequently, but after the 17th day of December, offered to pay the amount of said Crow sale, with 10 per cent. interest thereon, having been instructed to do so.

The said Smith paid to said Henslee the sum of two hundred dollars, which Henslee had expended in doing the annual work on the property involved. Smith also paid several judgments on which no sales were made, and redeemed from the Robison sale of the 8th of July, 1882, and received a certificate thereof from the Sheriff.

These were all held by the defendants, and the money received by them.

On these and other facts, this bill was filed, and an injunction issued forbidding the Sheriff of Chaffee county from giving a deed to said Crow, under his certificate of purchase; and forbidding any interference with the said property by virtue of the said Crow judgment and sale.

The bill also seeks relief in consequence of the property in question having been sold *en masse* instead of in parcels, being susceptible of division, and because the statute of

Smith then examined the records of the County Court in Lake county, and finding the judgment in favor of said Crow, on which the No. 2 sale was made, to be on a personal claim of said Henslee, who was at the time the agent of the Brittenstene Silver Mining Company, to receive service of process in the State of Colorado; and that Henslee had assigned or pretended to assign his claim or pretended claim to said Crow, on the 4th day of January, 1882, and conspired with Crow to procure said judgment; that Crow, in pursuance of said fraudulent conspiracy, had caused suit to be brought against the Brittenstene Silver Mining Company; that Henslee had been served with the summons on the 9th day of January, 1882; that said summons required the defendant to appear and answer within ten days of said service; that no officer or agent of the defendant was in Colorado at the time, or had knowledge of said action; that said Henslee, without any authority, and without the knowledge of the officers of said defendant, with transparent, fraudulent purpose, on the 13th day of January, 1882, four days after the service of summons on him, and before time for appearance and answer, went into court with the attorneys of his confederate, Crow, and fraudulently confessed judgment against the Brittenstene Silver Mining Company, in favor of Crow; that the complaint in said action nowhere alleges that the defendant was a corporation.

That it nowhere appeared in the complaint, or in the summons, or in the return of the Sheriff on the summons, that the defendant was a corporation, or was doing business in the State of Colorado.

That it nowhere appeared in the record of the court, or on the docket thereof, that the defendant was a corporation, or was doing business in the State of Colorado, or that there was any appearance of any attorney for the defendant, or any warrant of attorney to authorize the said Henslee to

waive the defendant's right allowed by the law and the Constitution of the State of Colorado, to appear in said action, or any warrant of attorney authorizing the said Henslee to confesa a judgment for any amount against the defendant.

That by reason of the foregoing, the court had exceeded its jurisdiction in entering up a judgment before the said ten days had expired, and that said judgment, so procured, was a fraudulent and void judgment, and that the transcript of said judgment, filed in Chaffee county, created only an apparent lien against the property of the defendant therein, and the sale pursuant to such a judgment was an unauthorized and void sale, and conferred, in fact, no right whatever upon the collusive purchaser, Crow. Finding these facts, Smith reported them with all expedition to the Appellant in New York, and subsequently, but after the 17th day of December, offered to pay the amount of said Crow sale, with 10 per cent. interest thereon, having been instructed to do so.

The said Smith paid to said Henslee the sum of two hundred dollars, which Henslee had expended in doing the annual work on the property involved. Smith also paid several judgments on which no sales were made, and redeemed from the Robison sale of the 8th of July, 1882, and received a certificate thereof from the Sheriff.

These were all held by the defendants, and the money received by them.

On these and other facts, this bill was filed, and an injunction issued forbidding the Sheriff of Chaffee county from giving a deed to said Crow, under his certificate of purchase; and forbidding any interference with the said property by virtue of the said Crow judgment and sale.

The bill also seeks relief in consequence of the property in question having been sold *en masse* instead of in parcels, being susceptible of division, and because the statute of

Colorado requires such property to be sold in parcels only, sufficient to satisfy the execution under which the sale is made.

No controversy is made concerning the personal property described in the bill, the complainant having acquired the same since said bill was filed. This question is therefore eliminated from the case.

The decree made in the Court below undertakes to award partial relief to the complainant by ordering that the money paid by the complainant in settlement of other judgments and liens, and received by defendants, should be repaid to complainant within thirty days, or in default thereof complainant should be entitled to a release from the defendants of any rights they acquired under the Crow sale, and under the second Evans sale, on payment to defendants of the amount of those sales.

The decree is in substance a denial of the complainant's rights as a *bona fide* purchaser, succeeding to the legal title to said property, and a confirmation of the fraudulent schemes and devices of defendants.

It recognizes the defendants as the owners of the said property, with no legal title and with only equitable liens at best, which, in any proper view, were intended and should be used only as security for the payment of the money due. It sustains the validity of the Crow judgment, although a transcript of that judgment was in evidence, and although the evidence conclusively shows, and particularly from Henslee himself, that he had no authority to confess the judgment.

It ignores the principle universally applied in Courts of Equity, that a party who seeks for equitable protection, must first do equity, inasmuch as the defendants have not in their answer or in the evidence, indicated their willingness to repay to complainant the money he paid to them

on judgments held by them.

It sustains the validity of the second Evan's sale, by recognizing it as a lien against the property, notwithstanding the well settled principle that the same property cannot be sold a second time on the same judgment, inasmuch as after the first sale nothing remains to be sold.

The decree is unjust, erroneous in law, illogical and inconclusive.

The questions raised by the appeal are—

[1.] Whether the judgment of Joseph R. Crow is not a fraudulent and void judgment, on the evidence.

[2.] Whether said judgment is a lien against the property involved.

[3.] Whether the sale to Joseph R. Crow, on the 17th of June, 1882, was not a void sale, both because it was on a void judgment, and because the Sheriff sold the property *en masse*, instead of in parcels.

[4.] Whether the sale to G. Evans, of the 19th of August, was not a void sale because it was on the same judgment on which the sale of the 10th of June, 1882, took place, and because the property was sold *en masse*, instead of in parcels.

[5.] Whether, even if the sales to Crow and to Evans were valid and regular sales, the facts in evidence do not present a case for the equitable interference of the court, on the ground that complainant was a *bona fide* purchaser, and has both the legal and equitable title to said property, and was guilty of no laches in protecting said title, he being advised that it was void, and his counsel being told that it was subject to the Robison execution and sale, which was thought to be the senior by the sheriff, and was so recited in the two certificates of purchase, of the 10th and 17th of June.

ASSIGNMENT OF ERRORS.

I.

The court erred in dismissing the complainants bill and amended bill, as to Robert Ray, Sheriff, one of the defendants.

II.

The court erred in decreeing that the defendants, L. C. Nelson, H. Noel, W. N. Loker, J. R. Loker, James Hunter and O. H. Simms, should within thirty days from the date of such decree, refund, or tender to the complainant or his counsel, the sum of $3253.90, and failing so to do, that the complainant, John E. White, agent, may pay to the said defendants the amount of the Sheriff's certificate of sale to Joseph R. Crow, and interest thereon, and the amount remaining unsatisfied of the Griffith Evans' judgment, and interest thereon, and when said claims were paid, should quitclaim to the complainant such interests as they have, or may have acquired under said liens, judgments and certificates of sale.

III.

The court erred in decreeing that so much of said complainant's bill and amended bill of complaint as seeks to set aside the sale, under the judgment of Joseph R. Crow, be dismissed.

IV.

The court erred in decreeing that said complainant's bill, and amended bill of complaint as to all said defendants, be dismissed.

V.

The court erred in decreeing that the relief prayed for in said bill, be denied.

VI.

The court erred in decreeing that the preliminary injunction granted in the action, be dissolved, and in decreeing that no injunction be allowed the complainant for anything in his said bill alleged.

VII.

The court erred [1] in not declaring and decreeing that the said judgment of Joseph R. Crow was a void and fraudulent judgment, and [2] in not decreeing that said judgment was not a lien upon the said property of the Brittenstene Silver Mining Company, in Chaffee county, Colorado, and [3] in not decreeing that the sale on said judgment of Crow, was a null and void sale, and created no lien against said property, and [4] in not decreeing that the sale by the Sheriff, *en masse* instead of in parcels, was a void sale, and created no lien against the property so sold, and [5] in not decreeing that the second sale to G. Evans, of the 19th of August, 1882, was a null and void sale, and created no lien against the property so sold, and [6] in not decreeing that the title of the complainant was the superior and paramount title to said property, and [7] in not granting to the complainant the relief prayed for in said bill of complaint.

BRIEF OF ARGUMENT.

At the time of the hearing in the court below, the legal title to the property in question was in the complainant, who succeeded to all the right, title and interest of the Brittenstene Silver Mining Company.

Freeman on Ex., p. 323.

When a sale is made under execution, of lands, the defendant has the right of possession until the time for redemption expires.

Wash. on R. E., p. 33.

The purchaser at execution sale has simply an inchoate and conditional right to an estate, liable to be defeated by redemption within the time allowed by law.

Rorer on Jud. Sales, s. 949.

Until the deed passes from the sheriff, legal title is in judgment debtor or his grantee.

The statute of Colorado relating to redemption of property sold under execution, is found in G. S. Colo., p. 526, 1419, Sec. 11, and is as follows :

"It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within six months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or the sheriff or other officer, who sold the same for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in execution, together with interest thereon, at the rate of ten per cent. from the time of such sale; and on such sum being paid, as aforesaid, the said sale

and the certificate therein granted shall be null and void."

Sec. 12, p. 527, G. L. Colo., provides for redemption by judgment credit and in part is as follows:

"After the expiration of six months, and at any time before the expiration of nine months from the sale of any lands or tenements under the preceeding sections hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following." * * *

Sec. 21, p. 530, G. L. Colo., is as follows:

"In all cases of redemption of lands from sales had under any attachment, order or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or person, from whom said redemption takes place, to make out an instrument in writing under his hand and seal, evidencing such redemption, which shall be recorded in the recorder's office of the proper county, in manner as other writings affecting the title to real estate, and filed and recorded, and which recording shall be paid for by the party redeeming."

In accordance with the foregoing provisions, the complainant redeemed from the No. 1 sale to Evans, of June 10th, 1882, and received a certificate of said redemption from the sheriff.

The certificate issued by the sheriff to G. Evans, on the sale of June 10th, 1882, recited that it was "subject to an execution in favor of George M. Robison, for $466.55."

The certificate issued by the sheriff to Joseph R. Crow, on the sale of June 17th, 1882, also recited that it was "subject to an execution in favor of George M. Robison."

The complainant and his attorney had a right to rely upon those recitals, and upon the statement of the sheriff toSmith to the same effect, and even if the pretended judgment and sale to Crow was valid, if the complainant

redeemed from what he had reason to suppose was the elder lien, the title thus acquired would hold the realty in preference to the purchase under the sale made on what he had reason to suppose was the younger lien.

Sweezy vs. Chandler, 11 Ill., 445.
Merry vs. Bostwick, 13 Ill., 409.

The statute of redemption was designed for the benefit of the debtor, by preventing a sacrifice of his property.

1 Cowan, 501.
4 Coms, 561.

The statute will therefore be construed liberally as in favor of the debtor and his redeeming creditor.

~~18 Wend, 598.~~ ~~20 Wend, 417.~~
~~20 Wend, 598.~~ ~~7 Paige, 177.~~
~~25 N. Y., 619.~~ 2 Hill, 51.
~~7 Hill, 177.~~ ~~15 Wend, 248.~~
10 Paige, 249.

II.

The judgment in the court below clearly holds that it did not have jurisdiction of this case, to do full and complete justice between the parties, by reason of the statute of the United States providing that, "Nor shall a writ of injunction be granted by any court of the United States to stay proceedings in any court of a state."

This statute is not a limitation upon the power of the court except as to granting injunctions and in no manner restricts the United States Courts from setting aside judgments and procee lings of state courts fraudulently obtained, and to settle any other equitable rights between the parties.

This court states the true rule in the case of Watson vs. Jones, 13 Wall, 720, under a general prayer for relief from proceedings in the state court of Kentucky. It says, "Under

this prayer for general relief if there was any decree which the circuit court could render for the *protection* of the *rights* of the plaintiff, and which did not enjoin the defendants from taking possession of the church property and which did not disturb the possession of the marshall of the Louisville Chancery, that *court* had a *right* to hear the *case* and grant *that relief*."

The case just cited sustains the jurisdiction of the court below in this case, to the fullest extent, to give plaintiff all that is asked for under his general prayer for relief.

This is not a case of conflict of jurisdiction, the sales have all been made and time for redemption ended, and the only act left to complete the proceeding is the ministerial act of the sheriff to make the deed under the Crow sale. Nothing is to be done by the court, or under its process.

Before the bringing of this suit all of the proceedings of the state court being at an end, the principle stated in the case of Buck vs. Colbath, 3 Wall, 342 is in point, and sustains the jurisdiction of the court below as to that part of the plaintiff's bill that was dismissed.

The defendants in their answer plead specially that the time for redemption under the state law has passed, and that proceedings under the state court and state law has perfected in them all the rights they could take under any circumstances under the proceedings of the state court or state law. Then how can it be said that this case in any manner interferes with the jurisdiction of the state court?

The court in this case is not asked to interfere with the possession or output of the mine, nor its management, or control, but to simply protect the plaintiff where he has been deprived of his rights by fraud.

Metcalf vs. Williams 104 U. S., 93.

Is the position of the court below a consistent one?

They say they cannot interfere with the state court matters, still assume to regulate the parties as to redemption money, and on failure to comply with the judgment of the court assume to decree title, or decree that deeds shall be made by defendants to plaintiff to release title acquired under state court proceedings.

Again this is not a question of jurisdiction between two courts exercising the same jurisdiction.

Under the constitution and laws of the state of Colorado, the county court of Lake county is a court of limited jurisdiction and can only exercise jurisdiction where the amount involved is $2,000.

Constitution of the State of Colorado, Art. 6, Sec. 23.

"County courts shall be courts of record and shall have original jurisdiction in all matters of probate, settlement of estate of deceased persons, appointment of guardians, conservators and administrators and settlement of their accounts, and such other civil and criminal jurisdiction as may be conferred by law, provided such courts shall not have jurisdiction in any case where the debt, damage or claim or value of property involved shall exceed two thousand dollars except in cases relating to the estates of deceased persons."

While it could exercise jurisdiction and render the judgment in the Crow case for the sum of $1577.34, yet it would have no jurisdiction in equity to set aside a sale where property was worth $50,000; hence if we go into the state courts we could not bring suit in the county court but would have to go into the district court, that has concurrent jurisdiction with the United States circuit court. And why would that not make the same conflict as to bring it in the United States circuit court.

Not only that, but this case involves the consideration of judgments rendered in the county courts of two different counties, and of a court in a different county from that in which the property is situated. The judgment lien in the Crow case was created by transcript filed in Chaffee county, while the judgment was rendered in Lake county.

This court may review the jurisdiction of any other court when their proceeding are brought in question on account of jurisdiction.

Elliott vs. Peirsol 1 Pet., 328.
Shelton vs. Tiffin, 6 How., 163.
Nettleton vs. Mosher, 3 Fed. R., 387.

III.

The court of equity will take jurisdiction where it avoids a multiplicity of suits, or where the proceeding sought to be annulled or corrected, is apparently valid upon its face, and the alleged invalidity consists in matters to be established by extrinsic evidence. Hence, if the judgment of Crow vs. the company, is apparently valid on its face, but in fact, void, then equity takes cognizance of it.

Ewing vs. City of St. Louis, 5 Wall, 413. See page 418, in point.

In this case there seems to have been no question of the jurisdiction of the U. S. court, to set aside the judgment of the state court on a proper case. To the same effect are Haywood vs. city of Buffalo, 14 N. Y., 535. See page 541.

Scott vs. Onderdonk. 14 N. Y., 9.

One of the objects of this suit is to set aside the judgment and proceedings in favor of Crow vs. the Brittenstene Company, rendered in the county court of Lake county,

which appears on its face to be valid, but the evidence shows it to be void, because fraudulently obtained, and confessed by John B. Henslee, without authority.

It is a judgment confessed, and rests upon the confession, and not upon service of process, and stands on the same basis as if the process had issued.

Service of process was made on him as a state agent appointed by deft., under the statute, for the sole purpose of receiving process.

Service purports to have been made on the 9th of Jan., 1882, and judgment confessed Jan. 13th, 1882, being four days after service.

Under the code, defendant had ten days to answer.

Colo. Civil Code of 1877, page 12, Sec. 32.

IV.

Although record shows jurisdiction, it may be denied and shown that an attorney or agent had no authority to appear, and on showing the fact, the judgment is declared void.

Eagor vs. Stover, 59 Mo., 88.
Thompson vs. Whitman, 18 Wall, 457.
Galpin vs. Page, 18 Wall, 350.
Knowles vs. The Gas Light Company, 19 Wall, 58.
Hall *et. al.* vs. Lanning *et al.*, 91, U S., 160.
StClair vs. Cox, 106 U. S., 350.
Pennoyer vs. Neff, 95 U. S., 714.

In this last case cited, the court will notice the following special points:

First—"The judgment, if void when rendered, will remain void, and its validity depends on the jurisdiction of the court before which it is rendered," hence the question

here,—did the county court of Lake county, on the 13th day of January, 1882, have any jurisdiction of the case, when Henslee had no authority to enter appearance of the defeudant?

Second—The U. S. courts are of a different sovereignty, exercising a distinct and independent jurisdiction, and gives only the same credit to judgments of state oourts, as state courts give to them."

Third—"Due process of law requires appearance, or personal service to render judgment against the person."

Now, in the light of these authorities, we wish to call the attention of the court to the opinion of Hallet, Judge in the court below.

White vs. Crow, *et. al.*, 3 Colo. Law Rept., 543.

After making a statement of the facts, in our view wholly at varience with the case proved, he says, 3 Colo. L. R. page 547 :—"While it may be true that Hensleee was without authority, and as agent of the company appointed to receive service of process, he would not have power, under the statute, to confess judgment in favor of any one, and bind the company in that way, the judgment therefore was irregular, perhaps subject to reversal on that account, yet we do not think it is open to collateral attack."

The remarkable statement of the proposition is, that Henslee, without authority, entered the appearance of the Company, and confessed a judgment, therefore it was a valid judgment, only irregular, and not subject to collateral attack. The court also seems to think that this suit is a collateral attack of the judgment. We do not so understand it. It is a direct proceeding to set the judgment aside, declare priority of liens, and to redeem etc.

When the court below admitted that it was confessed without authority, it admitted that it was obtained fraudulently, and, if so, equity does not stop to inquire

whether it is void, voidable or irregular.

Again, we are told that the court in which the action is pending, must, of necessity, judge of the authority of the agent to appear, and all other courts are concluded. That is, if a non-resident corporation owns property in the State of Colorado, and a party conceives the idea of bringing a fraudulent suit in the state court, and obtains a fraudulent judgment by confession, and sells the property of the company and obtains a deed for it, then the U. S. courts are powerless in equity, to set it aside, or give any relief. If service is conclusive before deed made, it is also after deed made.

The answer to this is that fraud may be arrested at any point of the proceedings.

The power and authority to confess a judgment must be strictly construed.

Chase vs. Dana, 44 Ills., 262.

V.

The complainant was a bona fide purchaser for valuable consideration of the legal title to the property in question. He had paid his money to the Receiver at the sale in New York. The Receiver stood in th: place of the judgment debtor, and complainant received a deed from him as well as from the judgment debtor given by order of the New York court. Crow was a judgment creditor proceeding *in invitum* and was not entitled to the same favor as a purchaser bona fide. And the complainant having the legal title the court was bound to allow it superior strength when the rights of the parties are equal.

Story Equity Jur. Sec. 1,502-1,503.

Rorer on Jud. Sales Sec. 698. Cases cited.

It would appear unnecessary to argue that the rights of

the complainant were superior to the rights acquired by Crow on his purchase and certificate, even if that purchase and certificate were based on an unimpeachable judgment, because he had paid no money at said sale but had simply bid an amount slightly in excess of his judgment and held his certificate as a security for the payment of the money. Being a mere security until displaced by a deed under the statute it should be subordinated by the court to the purpose for which it was intended, viz. to secure from the judgment debtor or his grantee the payment of the money due.

When it is considered, as appears in the testimony of Smith, that he on the 17th of December, 1882, acting for complainant 2,000 miles away, offered to pay to Henslee (see Smith's deposition f. 303 *et seq.*) all the claims which should be presented as proper evidence of debts against the Brittenstene Silver Mining Company, it should have a strong weight in equity as against the evident evasions of Henslee, who told Smith that he owned and controlled all said claims.

It is contrary to all principles of equity when the situation and circumstances of the parties are considered, that the complainant should be deprived of his right to the property on payment of the outstanding liens against it.

This part of the argument proceeds on the assumption that the Crow judgment was valid.

The court below, it is true, did recognize that the complainant had with diligence sought to perfect his title and had in good faith parted with his money for that purpose, and so it decreed that the defendants should refund to him what he had paid (to them) to discharge the property from numerous other liens against it. (See decree f. 714)

But this view wholly fails to recognize any superior strength in the legal title and regards the contesting parties as though they were both creditors *in invitum.*

This view also ignores the recitals in the two sheriffs' certificates to Evans on June 10, (on Ex. "E" f. 64) and to Crow on June 19, (Ex. "C" f. 58,) that they were each subject to an execution of George M. Robison which was redeemed from by appellant.

The evidence shows that Henslee supposed (see Smith's dep. f. 182) and the sheriff told Smith (Henslee 485) the Robison execution was the senior lien (see Smith's dep. f. 313). This view of the decree also ignores entirely the statement of Henslee to Smith (Smith's dep. f. 302) on the 7th of December, that he owned or controlled all the claims and Smith's offer at that time (to pay all that was due if the proper evidences of the debts were presented by Henslee or any one else.) It is a doctrine always regarded by the court that things agreed to be done shall be actually performed.

And it appears in the evidence that Henslee not only received from Smith afterwards money to pay for annual assessments done by Henslee (Smith's dep. f. 316) but that the latter received the money paid on some of the judgments.

It appears in evidence that Henslee was the manager from the beginning to the end for the parties adversely interested to the complainant. (Smith's dep. f. 318, 319, 320. Dep. Robison f. 285, 286. Dep. G. Evans f. 246, 247, 248. Dep. Crow f. 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535. 536, 537. 538, 539, 540, 541, 542, 543, 544, 545, 552, 553, 554, 555. Dep. Henslee f. 408, 409, 410, 411, 420, 421, 444, 450. 460, 461, 462, 470, 491, 472, 473, 474, 475, 476, 477, 478, 490, 502, 503, 512, 513.)

VI.

But the so-called judgment of Joseph R. Crow recovered in the county court of Lake county, is shown by the evidence

to be a null and absolutely void judgment.

(1.) It appears and is admitted in the answer that Henslee was not an agent of the defendant in the Crow suit in any sense, except to receive service of process in any action commenced against the defendant.

Heatherly vs. Hadley, 4 Oregon 1.
Luce vs. Isthmus T. & R. Co., 6 Oregon, 125.
Story on Agency, Sec. 21 and 31.
Buck vs. Ashnelot Manufacturing Co., 4 Allen, 357.
Mahone vs. M. & L. R. Co., 111 Mass., 72.

(2) It appears and is admitted that the defendant, the Brittenstene Silver Mining Company, was a non-resident corporation, organized under the laws of the State of New York.

(3) The transcript shows that the court rendered the judgment against the Brittenstene Silver Mining Company four days after the service of summons on the same man Henslee who assumed to confess said judgment.

The court at that time had not acquired jurisdiction either of the person of the defendant or of the subject matter of the suit, as appears in evidence.

Hoehne vs. Rupear, 1 Colo., 405.
Hoyt vs. Macon, 2 Colo., 114.
Hall vs. Walbride, 2 Aikens Vt., 21.
~~Carter vs. Gregory, 8 Pick., 164.~~
Drake on Att., Sec. 262.
Palmer vs. Cowdray, 2 Colo., 1.
Webster vs. Reed., 11 How., 437.
Chapin vs. Thompson, 20 Cal., 681.

A judgment *in personam*, without jurisdiction of the person of defendant is a void judgment, and an execution

sale thereon is also void.

Rorer on Jud. Sales, Sec., 740.
Johnson vs. Baker, 38 Ill., 98.

There was no "due process of law" in procuring the Crow judgment.

Abbott vs. Shepherd, 44 Mo., 273.
Smith vs. McCutchen, 38 Mo., 415.
Latimer vs. U. P. R. R. Co., 43 Mo., 105.

VII.

The sale to G. Evans of the 19th of August, 1882, was an absolute nulity. It was upon the same judgment as the sale of the 10th of June, 1882, to the same purchaser. The amount of that judgment was about $2,000. At the first sale (10th June) instead of bidding the full amount of the execution the purchaser, only bid the sum of $1,000, and received from the sheriff a certificate therefor.

Then followed the pretended sale of Crow on the 17th of June, 1882, and the sale of Robison on the 8th of July, 1882. Then, it is presumed, that Evans seeing that the property could be redeemed without satisfying the whole of his judgment, undertook to sell the same property again on the same judgment. On the second sale, of the 19th of August, 1882, he bid $1,049, enough to cover his whole judgment and costs.

That is the obvious purpose and theory of the second sale to G. Evans.

At the time of the said second sale there was no lien on the property sold by virtue of the Evans judgment. It had been exhausted so far as the Evans judgment was concerned by the first sale of the 10th of June, 1882.

Russel vs. Allen, 10 Paige, 249.

It would have been different had a part only of the property been sold in the first sale the 10th of June, 1882.

But the whole was sold, nothing therefore remained belonging to the judgment debtor but the equity of redemption. There was nothing to be sold, and the proceedings therein were without any authority in law and created no lien against the property.

The statutory right to redeem is an interest to which the lien does not attach.

Merry vs. Bostwick, 13 Ill., 398.
Watson vs. Reissig, 24 Ill., 281.
Blair vs. Chamblin, 39 Ill., 526.
Rorer on Jud. Sales, Sec. 922.

A party cannot sell the same land twice before redemption on two different executions against the same person. A second sale is void.

Ex parte Stevens, 4 Cow., 136.
Hewson vs. Deygert, 8 Johns (N. Y.) 333,335.

VIII.

But the sheriff advertised and sold the property as a whole and not in parcels.

It is in evidence that the property consisted of several parcels, which were susceptible of subdivision.

The law of Colorado on the subject is as follows:

G. L. Colo., Chap. 3, 1,416, Sec. 8, . 525.

"When any property, real or personal, shall be taken in execution, if such property is susceptible of subdivision it shall be sold in such quantities as may be necessary to satisfy such execution and costs."

This law is mandatory.

In Indiana it is provided by statute that, "If the estate

shall consist of several lots, tracts or parcels each shall be offered separately; and no more of any real estate shall be offered for sale than shall be necessary to satisfy the execution, unless the same shall not be susceptible of division."

A sale, *en masse* under this law, has been decided in Indiana to be void.

Piel vs. Brayer, 30 Ind., 333.
Reed vs. Diven, 7 Ind., 189.
Tyler vs. Wilkinson, 27 Ind., 450.
Jackson vs. Newton, N. Y., 18 Johns, 355.
Stover vs. Boswell's heirs, 3 Dana, 232.
Davidson vs. McMurtry, Ken., 2 J. J. Marsh, 68.
Morrison vs. Bruce, 9 Dana, 211.
Adams vs. Keiser, 7 Dana, 208.

The court below held the sale voidable, but as an excuse why they will not interfere say as follows: "We do not think it can be regarded as a void sale, and if it be voidable the right can only be asserted in a *court of the state*.

"We have not jurisdiction in this court to set aside a sale made in a court of the state with a view of ordering another sale, the sale not having been made pursuant to the statute.

That portion of the bill therefore should be dismissed *without prejudice* to the right of the plaintiff to maintain another bill for the same cause in any court of *competent jurisdiction*."

Is that a correct statement of the law? It strikes us that if the court was to set aside the sale, it would in no event and under no circumstances have anything to do with ordering another sale.

When the sale is set aside the parties would simply be left in *statu quo*, and stand in the same relations to each other as before the sale.

IX.

It is unnecessary to more than suggest that courts of equity grant relief when a party has been depriverd of rights by fraud, accident or misake, and particularly when a judgment has been procured by fraud.

Leonard vs. Bryant, 2 Cush., 32.
Downs vs. Fuller, 2 Met., 135.
Metcalf vs. Williams, 104 U. S., 93.
78 N. Y., 351. 12 N. Y., 156.

X.

Affirmative relief was granted the defendants by the court below, contrary to the well established rule that it can only be granted on a cross bill and not on an answer.

Story Eq. Pldg., Redfield's ed.. Sec. 398.
McDonald vs. Smith, 23 Ill., 611.
Armstrong vs. Pierson, 5 Iowa, 317.
Chapin vs. Walker, 1 Colo. L. R.

XI.

In this case a valuable mining property, worth upwards of $50,000, was sold for the insignificant sum of $1,718.27.

The whole proceeding, from the inception of the Crow suit, to the sale thereon, was designed under the cloak of law, to secnre an unlawful advantage by one standing in close relations to the defendant debtor. Its obliquity is not diminished because the fruits of the fraud are to be divided.

The transaction is one which is so unconscionable as

to shock the moral sense, and a court of equity will always interfere to defeat machinations of fraud.

Hannibal and St. J. R. R. Co. vs. Brown, 43 Mo. 294.

C. EDGAR SMITH,
Attorney for Appellant.

L. S. DIXON,
Of Counsel.

110—183

IN THE

Supreme Court of the United States

OCTOBER TERM, 1883.

[No. 1224.]

JOHN E. WHITE, AGENT. - - - *Appellant.*

vs.

JOSEPH R. CROW, *et al*, - - - *Appellees.*

STATEMENT, BRIEF AND ARGUMENT FOR APPELLEES.

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Of Leadville,
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APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF COLORADO.

STATEMENT.

The Brittenstene Silver Mining Company, a corporation organized under the laws of the State of New York, was, from September 1st 1880 until December 1st 1882, the owner of twelve mining claims and a tunnel site, situated in Chaffee County, Colorado.

These claims were located in a group, and intersected and overlapped each other; the tunnel site extended across the claims.

During the latter part of 1880, and the earlier part of 1881, the company worked this property so unsuccessfully that it became financially embarrassed.

John B. Henslee was the authorized State agent of this company in Colorado for the service of process, was a large stockholder therein, and voluntarily, without salary or remuneration, attended to some of the business of the company in Colorado. This relation existed from the organization of the company until its property was sold.

The appellant, John E. White, during the same period, was a stockholder, officer and director of the company, residing in New York City.

John B. Henslee, at the solicitation of the officers and directors of the company in New York, induced the Colorado creditors to refrain from suing on their claims, by promising their early payment by the company.

These promises were broken; and in January, 1882, the creditors began suits against the company.

The company owed John B. Henslee $1500, for money advanced by him for the company to pay for work done on the property during 1881.

This claim John B. Henslee assigned to Joseph R. Crow, in partial payment of a debt of $2,200 for borrowed money which Henslee owed Crow.

After this assignment, Joseph R. Crow brought suit on the claim, in the County Court of Lake County, Colorado. The summons was served on John B. Henslee, as State agent, on January 9th 1882, and four days thereafter, John B. Henslee, as such State agent, appeared in open court and consented to the submission of the case, and judgment was thereupon rendered. A transcript of the judgment was filed with the recorder of Chaffee County, Colorado, on January 17th 1882, and it thereupon became a lien upon the property of the company in that county. It was the senior lien against the property.

In the same court George M. Robison obtained judgment against the company for $346.35. The lien of this judg-

ment dated from the 20th of January 1882, the day the attachment was recorded in Chaffee County. It was the second lien against the property.

The officers and directors in New York were notified of these suits and judgments by John B. Henslee, and at their solicitation, and upon their promise that the company would pay the judgments, John B. Henslee secured from the judgment creditors a stay of execution on their judgments. In consequence no execution was issued on either, until four months after their rendition, and not until the property had been levied on under an execution on a junior judgment. Griffith Evans had, in the interim, recovered judgment against the company for $2,000, in the Chaffee County Court, and immediately issued execution thereon.

Under this execution all the mining claims and the tunnel site were, on June 10, 1882, sold to Griffith Evans for $1,000.

The same property was sold, under an execution on the Crow judgment, on June 17, 1882, to Joseph R. Crow for the amount of his judgment, and again sold to George M. Robison July 8, 1882, for the amount of his judgment under an execution thereon.

Under a second execution on the Evans judgment, the same property was sold to Griffith Evans for $1,049.83 on August 19, 1882. Certificates of sale were delivered to each of these purchasers and were duly recorded in the recorder's office of Chaffee county. These certificates specified the time within which the property could be redeemed, which was six months from the dates of the respective sales. Therefore, the time within which the property could be redeemed from the first Evans sale expired on December 10, 1882, from the Crow sale on December 17, 1882, from the Robison sale on January 8, 1883, and from the second Evans sale on February 10, 1883.

The certificates given to Crow and Evans contained a statement that the sales to them were subject to the sale to Robi-

son. John B. Henslee appeared and bid the property in for the plaintiffs in execution at both the Robison and Crow sales.

There were two later judgment liens against this property, one in favor of Arthur Falkenaw for $110.87, and one in favor of E. R. Howe for $539.86. The property was never sold under these judgments.

The officers and directors of the company in New York were notified by John B. Henslee of all these sales and judgments, and of the time within which the property could be redeemed from the sales, and the company, through the board of directors, made various efforts during this period to raise money with which to pay off these liens. It endeavored to mortgage the property, and tried to induce the stockholders to contribute the amount necessary.

These judgments and certificates of sale were bought up by L. C. Nelson, H. M. Noel J. R. Loker, W. N. Loker, James Streeter, and O. H. Simons, appellees; some of whom were small stockholders in the company and some were not; some resided in St. Louis, some in Kansas, and some in Colorado. They bought the certificates and judgments and transacted most of the business connected therewith through the agency of John B. Henslee.

They are the real and only parties in interest in this suit.

Neither John B. Henslee nor J. R. Crow had, at the bringing of the suit, or has now, any interest whatever.

The interest of Griffith Evans ceased by settlement with appellant since the institution of the suit.

While these things were being done in Colorado, a receiver was appointed on May 29, 1882, for the property of the company in a suit pending in the Supreme Court for the city and county of New York. By order of that court the company conveyed all its property on October 23, 1882, to that receiver. At the receiver's sale in New York, appellant bid this property in for $3,000, and, by order of court, received a deed therefor from the receiver

on December 5th, 1882, and also one from the company on December 6th, 1882.

The sale by the receiver to appellant, John E. White, agent, was made before December 1, 1882. At the time of his purchase he knew of the liens against the property, and that the time to redeem the property was about to expire. On December 1, 1882, he attempted by telegraph to get an extension of this time. On December 2, 1882, he made a like endeavor through his attorneys, who were then notified, and who notified him, that no extension would be granted. He had notice from the records and from outside sources when the times of redemption from the sales would expire.

He redeemed the property, by paying the money to the sheriff, from the first Evans sale on December 9, 1882, one day before the time expired, and from the Robison sale on January 5, 1883. He satisfied the Falkenaw and Howe judgments by paying the money to the clerks of the courts. He paid the annual assessments on the property for the year 1882.

He failed and refused to redeem from the Crow sale, the time for which expired on December 17, 1882. He was notified in time if he had desired to redeem. No obstacle was interposed by appellees. Nor (inasmuch as he could have paid the money to the sheriff) was it in the power of appellees, even had they so desired, to prevent that redemption. After the time had expired, White offered to redeem from the Crow sale. Appellees refused the offer. Thereupon he brought this suit to enjoin the sheriff of Chaffee County from making a deed to the owners of the Crow certificate of sale for the property; to have the Crow certificate of sale declared null and void; to have the second Evans sale and certificate thereunder declared null and void; to have the sale of personalty to Evans declared void; and, upon payment of those liens by him, to have a release by quit-claim executed to him by the owners thereof.

Before trial appellant settled with Evans concerning the sale of the personal property. It is no longer a question in the case.

At the trial below it was admitted on all sides that the second Evans sale of the property on August 19, 1882, was invalid, and that the balance of his judgment remaining unsatisfied by his first sale, was simply a judgment lien. The decree conforms to this view and admission It is in appellant's favor. That question is eliminated from the case.

The only questions remaining for the court below were, whether the sheriff of Chaffee County should be enjoined from deeding the property to the owners of the Crow certificate of sale? Whether that certificate should be declared void? And whether the owners of the liens should, upon payment, release by quit-claim their interest?

After hearing, before a full bench, the decree was, in effect, that the bill be dismissed as to the sheriff, be dismissed as to J. R. Crow and John B. Henslee, be dismissed as to the other defendants, upon tendering to complainant the amounts received by them from complainant in payment of the other liens, with interest, and be dismissed without prejudice to the right of complainant to maintain a bill in a court of competent jurisdiction to set aside the Crow sale for irregularity.

The reasons for this decree appear in the opinion of the court published in 3 Colo. Law Reporter, p. 543. They are substantially as follows: That the Crow judgment was not void; that it was not subject to collateral attack; that it was conclusive in all other cases where drawn in question; that there was no fraud or concealment on Henslee's or defendants' part; that there was no excuse for failing to redeem from the Crow sale; that the federal court had no jurisdiction to restrain proceedings in a state court of coordinate jurisdiction: that the sale was not void because the property was sold *en masse;* that the federal court had no

jurisdiction to set aside a sale made in a state court; and finally that though without jurisdiction as to the sheriff the defendants in interest, having voluntarily submitted themselves to the jurisdiction of the court, must act equitably, and refund the money and interest received from complainant.

We respectfully submit that the circuit court did not err in this decree, except as to the terms imposed on appellees, and in support of our position present the following:

POINTS AND AUTHORITIES.

I.

The claim of John B. Henslee against the Brittenstene Silver Mining Company was just and meritorious. It was recognized as such by that company, both before and after judgment. The assignment of that claim to Joseph R. Crow was *bona fide* and for a valuable money consideration. By that assignment the right of action vested in Joseph R. Crow who obtained the judgment.

II.

The judgment of Crow is not void.—The court had jurisdiction over the subject matter of the action.

General Laws of Colo., sec. 571. It had jurisdiction over the parties. The summons was regularly and properly served.

"From the time of the service of summons in a civil action, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings."

Civil Code of Colorado, sec. 46.

From the moment of the service of process the court has such control over the litigants that all its subsequent proceedings however erroneous are not void. Freeman on Judgments, § 126.

Jurisdiction being obtained over the person and over the subject matter no error in its exercise can make the judgment void. Freeman on Judgments, § 135; Wimberly v. Hurst, 33 Ill. 166. Cloud v. Eldorado Co., 12 Cal. 128; Preston v. Clark, 9 Ga. 246; Bogliano v. Cook, 19 Md. 375; Hathaway v. Hemingway, 20 Conn. 191; Feaster v. Fleming, 56 Ill. 457; Fleming v. Johnston, 26 Ark. 421.

A judgment is not void, because rendered before or after the return day named in the summons. Glover v. Holman, 3 Heisk. 519; West v. Williamson, 1 Swan. 277.

III.

The appellant cannot attack this judgment in a collateral proceeding. It will be remembered that no attack was ever made on this judgment and no objection was ever made thereto until appellant began to seek an escape from the consequences of his neglect in not redeeming from the sale thereunder.

A judgment which is not void is not vulnerable to a collateral attack. Freeman on Judgments, § 126; Sacramento Savings Bank v. Spencer, 53 Cal. 537; DeLar v. Boone Co., 34 Iowa, 488; Town of Lyons v. Coolridge, 89 Ill. 529.

No person will be permitted to proceed in equity against a judgment to which he was not a party and which did not, at its rendition, affect any of his rights. Freeman on Judgments, § 512.

If the parties to an adjudication are satisfied with it no outside person will be permitted to intermeddle with it at law or in equity. Mayes v. Woodhall, 35 Tex. 687; Stone v. Lowne, 91 U. S. 341.

The grantee of land charged with a judgment lien at the date of the grant cannot have the judgment set aside for fraud. Morrison v. Smith, 27 Cal. 649. Nor can he in any manner inquire into the consideration of the judgment for

the purpose of impeaching or avoiding it. French v. Shotwell, 5 Johnson Ch. 554; 6 Johnson Ch. 235. Having taken the grant subject to a lien of which the grantor made no complaint, the grantor must abide by that lien unless he can show that it was procured by fraud which was designed to injure him. Sherfelt v. Sherfelt, 9 Paige, 137.

Appellant was not a party to the Crow suit. He acquired his interest more than nine months after the judgment was rendered. The judgment at its rendition did not affect his rights. The alleged fraud and collusion in obtaining it could not have been designed to injure him in any way.

The parties to that judgment are satisfied with it. The defendant company never took any steps against it. On the contrary it recognized its justice by securing a stay of execution thereon and by promising to pay it.

The land was charged with this lien at the time appellant purchased it. He had full knowledge of it. He took it subject to that lien. He intended to discharge it at the time he bought. There was no frand against him.

IV.

There was no fraud in obtaining the judgment. The debt was meritorious and justly due. It was legally assigned for a valuable money consideration. Under the Colorado statute, the right of action vested in the assignee, who brought the suit, and conducted it to judgment and sale for his own exclusive benefit.

V.

The defendant in that judgment, (much less its remote grantee), can not, in a court of chancery, attack or enjoin it for fraud or any error of law, or for irregularity, without showing that the result reached in that action would be

other and different on a second trial, and without showing a defense on the merits to the action.

The jurisdiction of enjoining judgments is not a favorite one with courts of equity. High on Inj. § 113.

Unless there is a good defense on the merits a judgment will not be enjoined. Idem. § 114.; Abelman v. Roth, 12 Wis. 81; Hazeltine v. Rensch, 50 Mo. 50; Hair v. Lowe, 19 Ala. 224.

In addition to fraud, a meritorious defense must be shown before a judgment will be enjoined. High § 190; Overton v. Blum, 50 Tex. 417; Pierce v. Olney, 20 Conn. 544.

Notwithstanding an alleged want of service of process, a court of equity will not interfere to set aside a judgment until it appears that the result would be other or different from that already reached. Freeman on Judgments § 498; Gregory v. Ford, 14 Cal. 138; Taggart v. Wood, 20 Iowa, 236; Crawford v. White, 17 Iowa, 560: Stokes v. Knar, 11 Wis. 389.

There has not been and can not be a meritorious defense shown to that action. Nor can it be shown that the result would be different from what it is.

An injunction will not be granted because of errors of law antecedent to the judgment. High § 225; Gardner v. Jenkins, 14 Md. 58; Boyd v. Chesapeake, 17 Md. 195; Stites v. Knapp, 2 Ga. Decis. 36; Drake v. Hanshaw, 47 Iowa, 291. Because equity will not sit as a court of error to revise proceedings at law. Cassell v. Scott, 17 Ind. 514. And because if entertained it would be virtually permitting the error of a court of law to create an equity. Stockton v. Briggs. 5 Jones Eq. 319.

If the court erred or its proceedings were irregular, the defendant had its remedy by appeal or by writ of error. Ses. Laws Colo., 1879, page 225. The forum chosen was not the proper one to correct errors of law.

VI.

The statute of Colorado does not prohibit a sale *en masse*, but provides that if the property can be divided, it shall be sold in such quantities as may be necessary to satisfy the execution and costs. General Laws § 1416.

In this case the sheriff tried to sell less than the whole, but failing sold the whole. The property could not be advantageously divided. It was more valuable as an entirety. Though sold four different times by the sheriff it never brought more than the debt. At one sale the whole sold for $346. At another the entire property brought less than half of the debt. At every sale the plaintiff in execution bought it.

After the period for redemption has expired it is too late to object that land, susceptible of division was sold *en masse* by the sheriff. Raymond v. Pauli, 21 Wis. 538; Raymond v. Holborn, 23 Wis. 57; Love v. Cherry, 24 Iowa, 210.

A third person cannot object to a sale *en masse*. Freeman on Ex. Sec. 296; Stephens v. Baird, 9 Cow. 274.

When the person entitled to complaim does not do so by some appropriate proceeding the sale is impregnable to any collateral assault, and must be treated as valid. Freeman on Ex. page 494; Brenker v. Rand, 19 Wis. 253; San Francisco v. Pixley, 21 Cal. 56; Williams v. Allison, 33 Iowa, 278; Finn v. St. Louis Public Schools, 30 Mo. 166; Cunningham v. Cassidy, 17 N. Y. 276.

The defendant company has never objected to this sale. The appellant, a third person, cannot. The sale is valid.

VII.

The Crow judgment was the senior lien against the property. A transcript of the judgment was filed for record on

the 17th of January, 1882, with the recorder of Chaffee county. This made it a lien. Sec. 214, Civil Code Colo. The levy of the Robison attachment was recorded on the 20th of January, 1882. The attachment was not executed until the writ was recorded. Sec. 98, Civil Code Colo.

The Robison sale was on July 8, that of Crow on June 17, 1882. These were matters of record — were notice to the world. Appellant could not have been misled by the statement in the Crow certificate, "that that sale was subject to the Robison sale." The same statement was in the Evans certificate, yet he redeemed that eight days before the time expired for the redemption under the Crow sale. That statement was false. Had it been true, the appellant would nevertheless have been obliged to redeem from the Crow sale within the time allowed by law. The sale under a former judgment passes title subject to prior liens. Bruce v. Vogel, 38 Mo. 100. If the law were otherwise the owner of a junior judgment lien could never perfect his title, if the owner of a senior judgment lien never sold.

The Crow judgment was the senior lien. Though there may have been sales under junior judgments, the holder of the elder lien may sell and when the time for redemption expires take out his deed. Freeman on Judgments, § 377; Lathrop v. Brown, 23 Iowa, 40; Rankin v. Scott, 12 Wheat. 177; Littlefield v. Nichols, 42 Cal. 372.

Appellant was not misled as to the time within which he could redeem from the Crow sale. That time expired on December 17, 1882. An extension of that time was refused him on the 1st and again on the 2d of December. The records on which he relied disclosed the very day to him. He had seven days longer to redeem from the Crow sale than he had to redeem from the Evans sale, yet he redeemed from the latter, and either willfully or negligently failed to redeem from the former.

Equity will not assist one whose condition is attributable to his own wilfulness, negligence, or carelessness. High. on Inj. § 378; Dillett v. Kemble, 10 C. E. Green. 66.

Appellant was not misled as to the facts; if he was mistaken as to the law, a court of equity may pity but cannot relieve him from the results of his ignorance.

VIII.

The appellees had a clear legal right to purchase these certificates of sale and judgments. They were willing to receive their money therefor, if the company or its grantee redeemed within the time allowed by law. They are innocent purchasers without notice of any alleged secret defect in the Crow judgment and sale. They interposed no obstacles in the way of appellant. Their agent, Henslee, offered, long before the term of redemption expired, if appellant would furnish the money necessary therefor, to redeem from all the liens. Appellant rejected this offer. He relied upon the records, and upon paying the money to the sheriff. There was no attempt to conceal the relation of Henslee with appellees; it was known to and acted on by appellant. All sums expended by appellant on the property and in the payment of the liens against it, after his failure to redeem from the Crow sale, were expended of his own wrong and against the wishes of appellees, who were powerless to prevent it. Appellant now raises the cry of fraud and conspiracy. There was none. Appellees attitude towards both White and the old company was open and above board. Surely it was as fair and legal as that of appellant, who though an officer and director of the company, purchased the property at a judicial sale for his own benefit.

IX.

A defendant, or his grantees, are allowed six months within which to redeem real property sold at a sheriff's sale, by the Colorado statute. General Laws, § 1419. A

person seeking to redeem must comply with the statute in every respect. Freeman on Executions, § 314; Spore v. Phillips, 27 Ala. 193; Chiles v. Davis, 58 Ill. 411; Wilcoxson v. Miller, 49 Cal. 193.

In this case the statute was not complied with in any respect. It follows that appellees, the owners of the Crow certificate, are entitled to a deed.

The decree of the circuit court should be affirmed.

Respectfully submitted.

L. N. BUCK,
For Appellees.
JOHN D. POPE,
Of Counsel.

SUPPLEMENTAL ARGUMENT OF JOHN D. POPE, IN BEHALF OF APPELLEES.

The defense in this case rests on three general propositions:

First. The judgment in Crow v. The Brittenstene Silver Mining Company, under which appellees acquired title, was a good and valid judgment.

Second. The sale of the property of the company under that judgment was effectual to pass its title, and

Third. Appellant has not shown any facts which entitle him to redeem.

I.

The judgment in favor of Crow was in all respects regular. Process was served on the local agent of defendant appointed under the statutes of Colorado to accept ser-

vice. This fact is not disputed, and as a legal proposition it cannot be disputed that the service was sufficient to authorize a judgment *in personam* against the non-resident corporation.

Lafayette Ins. Co. v. French, 18, How. 404.
Hageman v. Empire Slate Co., 97, Pa. St. 534.
Midland etc., Ry. Co. v. McDermid, 91, Ill. 170.
Pringle v. Woolworth, 90, N. Y. 502.

It appears in the record that the local agent undertook to represent the company in the litigation, and four days after service was perfected on him, appeared in court and permitted the case to be taken up and submitted to the court for final decision; and, upon admission of the agent that the demand on which the suit was based was just and not disputed by the company, the court gave judgment in favor of the plaintiff for the amount claimed in the petition. It is not denied now that the debt was just and that it was due when the suit was brought, but it is insisted, on the part of appellant, that the agent to accept service had no right to appear in court in any stage of the proceedings. On the contrary, we claim that where it does not appear that the corporation had any other agent or officer or any attorney within the State, and where it does not appear that it had a defense to make and had intrusted it to some one else, it should be presumed that the act of the agent was within his powers as such, and that the judgment should be treated as not only valid but perfectly regular. It has been held, and we think with good reason, that a person authorized to accept service for a corporation may confess judgment.

Miller v. Bank of British Columbia, 2 Oregon, 291.
Chamberlin v. Mining Company, 20 Mo. 96.

But, whatever may be held as to the implied powers of a local agent of a foreign corporation, it admits of no dispute

that he may be expressly authorized by the corporate authorities to conduct its litigation; that the authority may be given by parol; and that acquiescence after full knowledge in the exercise of such powers by the agent, would be equivalent to express authority given in advance. The evidence shows that the agent informed the home office of the company at once of the rendition of the judgment; that no steps were taken to set it aside; that time was asked for and obtained upon promise of payment, and that even after the sheriff had sold the property, the company and John E. White, the appellant here, took steps looking to the redemption of the property. Surely, after all this, the authority of the agent is not open to question. If an attorney in Colorado, who had charge of business of the company there, had considered himself authorized to represent the company in Crow's suit, had appeared for the company in that suit, and, on being informed of his action, the company had made no objection but had always afterwards recognized the judgment as valid, no question could be raised by a subsequent purchaser of property as to the regularity of the appearance of the attorney. And there can be no difference in principle where the agent of the company to accept service, after being served with process, assumes to represent his company in the suit.

But let it be conceded that the agent to accept service had no implied power to represent the company in the litigation, and that there has been no ratification of the authority assumed by him, still the judgment is perfectly valid. The premature taking of a case as submitted and the rendition of a judgment thereon, cannot possibly be worse than the rendition of a judgment by default before the time allowed the defendant for pleading has expired. And it is well settled that the entry of a judgment after the return day of the writ and before the defendant is in default for want of an answer, is a mere irregularity, to be corrected by motion

or by appeal or writ of error, and to be deemed as waived if not so corrected.

Branstetter v. Reeves, 34 Mo. 318.
Santher v. Ransom, Ib. 372.
Granger v. Judge of Superior Court, 44 Mich. 384.
Town of Lyons v. Cooledge, 89 Ill. 527, 534.

But the rule goes much further. All judgments rendered by courts having jurisdiction of the person and subject-matter, the relief granted being within the boundaries of such jurisdiction, are valid and cannot be collaterally attacked except for fraud. And even though the process has not been served in the manner required by law, or the return day of the writ has not arrived, still, the court has jurisdiction of the person sufficient to give it power to enter judgment. Consequently, a judgment rendered on defective service or before the return day of the writ, is valid until set aside on motion or reversed in an appellate court.

Dutton v. Hobson, 7 Kas. 196.
Armstrong v. Grant, Ib. 285.
Meisse v. McCoy's Adm'r., 17 Ohio St. 225.
Hendrick v. Whittimore, 105 Mass. 23.
Bromly v. Smith, 2 Hill, 517.
Harrington v. Wofford, 46 Miss. 31.
Christian v. O'Neal, Ib. 675.
Cale v. Butler, 43 Me. 401.
Glover v. Holman, 3 Heiskill, 519.
Whitwell v. Barbier, 7 Cal. 54.
Cooper v. Reynolds, 10 Wall. 308.
Cornett v. Williams, 20 Id. 250.
Gunn v. Plant, 94 U. S. 664.
Freeman on Judgment, secs. 126–135, and cases cited.

In opposition to the doctrine above set forth, appellant's counsel cite the case of Johnson v. Baker, 38 Ill. 98. If

the decision in that case is correct, it is on the ground that the justice's court is a court of limited jurisdiction, and that there are no presumptions in its favor.

It will be observed, however, that several of the cases above cited, especially those from New York, Tennessee and California, originated in the justice's court, and the doctrine of the case from 89 Illinois, *ante*, is directly opposed to the case of Johnson v. Baker. There can be no doubt as to the doctrine as applicable to courts of general jurisdiction. It should be remembered that the County Court of Lake County, Colorado, is a court of general jurisdiction—the only limit being as to the amount ($2,000), for which it may give judgment.

It is important to point out in this connection an important distinction between the provisions of the Civil Code of Colorado and the codes of most of the other states respecting what is known as the return day of writs. In Colorado there is really no such thing as a return day to a summons issued to bring a defendant into court. The day most nearly corresponding to a return day is the next day after service, for on that day the ten days allowed to appear and plead begin to run. In Missouri the first day of the term is the return day of the summons, and three or four days, as the case may be, are allowed the defendant to file his pleadings—to be counted from the return day. In Colorado there is no day named when the defendant is required to appear in court, but an outside limit for pleading is fixed, the computation of the pleading days commencing the day after summons is served. There is no reference to any term of court. The pleadings are filed with the clerk of the court in vacation as well as in term time and the clerk enters judgments in vacation in default of such pleading as is required by law. Hence, there is no return day, strictly speaking, in Colorado, and a judgment rendered on the fourth day after service—as was the judgment in favor of Crow—is not entered before the return day of the sum-

mons, but is like the cases in Missouri, above cited, where judgment was entered before the full time allowed for pleading had expired. (See secs. 29, 31, 32, 33, 51 and 150, Civil Code of Colorado.) It is not necessary, therefore, in order to sustain the validity of the Crow judgment to go to the extent of holding that a judgment rendered before the return day of the writ is valid unless a motion is made in time to correct the irregularity.

But appellant's counsel, assuming that the last day for pleading is the return day in Colorado, proceed to assert that until the ten days allowed for pleading have expired, the court has no jurisdiction of either the person or subject matter. In reply we say that the court always had jurisdiction of the subject matter because the amount of the demand sued on was less than $2,000. And as to the person, it is a principle of law running through all the cases hereinbefore cited, that the court has jurisdiction from the time of the service. It is not necessary to quote at large from those cases, and especially is this true because the Civil Code of Colorado, sec. 46, puts the question at rest. It reads:

"From the time of the service of the summons in a civil action, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings."

In Gere v. Gundlack, 57, Barb. 17, the court had occasion to discuss a similar provision of the New York statute. Sec. 139, vol. 5, Edmonds' New York Statutes (1869) reads as follows: "From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction and to have control of all the subsequent proceedings." Speaking of this provision the court said: "But the attachment was issued (a provisional remedy); and if it was legally issued, then all questions subsequent are questions of regularity and not of jurisdiction. * * This language is too plain to admit of dispute." In view of the foregoing explicit declaration of the statute law of Colorado, it is un-

necessary to discuss the question on principle as to when a court acquires jurisdiction of the person in that State. And hence, the cases cited on page 23 of appellant's brief could have no weight if they touched the question, which they do not. The Civil Code of Colorado was adopted after the decisions cited from 1st and 2nd Colorado were rendered, and they arose under a statute which required defendants to appear on the first day of a stated term. In Hoehne v. Respear, 1, Colo. 405, the defendant was served with process requiring him to appear at the August term 1869, of the Probate Court. Judgment was given on the return day of the summons for want of plea. A writ of error was sued out and the judgment reversed. It can hardly be necessary to point out the difference between that case and Crow v. The Brittenstene Silver Mining Company. In that case no attorney or agent of defendant appeared and consented that the case be taken as submitted and a judgment on the merits entered. Nor did the defendant after the judgment was entered ratify the act of any such attorney or agent. On the contrary, the defendant sued on a writ of error and was entitled to a reversal by reason of the irregularity. That was not a collateral attack on the judgment for irregularity such as is made on the judgment of Crow v. The Brittenstene Silver Mining Company, and, of course, the citation is entirely inappropriate.

The same observations apply to Hoyt v. Macon, 2, Colo. 114. Why Hall v. Walldridge, 2, Aiken Vt. 215, was cited is hard to comprehend. It decided that a party who has an attachment levied, by taking a separate confession on the same demand, waives his attachment lien. Palmer v. Conroy, 2 Colo. 1, relates to service by publication.

In Webster v. Reed, 11, How. 437, there was no notice given defendant and, of course, the judgment was void.

Chapin v. Thompson decides that in taking confessions of judgment when no service has been had the statute must be strictly pursued. Would it be possible to cite cases

having less bearing on the questions involved in this appeal?

From the foregoing discussion it is apparent that if the agent of the Brittenstene Silver Mining Company had incidental power to represent the company in court, or if his action in that regard was ratified after being known to the company, the judgment was regular; while if such authority did not exist in the agent and its assumption was not ratified, the judgment was still valid because the defendant had been duly served with process and the court had full jurisdiction. The premature entry of judgment was at most an irregularity which might have been corrected on motion or writ of error, but was waived by acquiescence. The efficiency of a motion, if the case had been one calling for action by the court, also the right of the defendant to move at any time within five months, clearly appear from the following provisions of the Civil Code of Colorado:

"Sec. 75. The court may, on motion, in furtherance of justice, and on such terms as may be proper amend any pleading or proceeding, etc. etc., and may, upon such terms as may be just and upon payment of costs, relieve a party or his legal representatives from a judgment or order or other proceeding, taken against him through mistake, inadvertance, surprise or excusable neglect; and when for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought during the term at which such judgment, order or proceeding complained of was taken, the court or judge at chambers, in vacation, may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term."

The Crow judgment can not be held invalid on the ground of fraud. It was founded on a confessedly just debt. Henslee, while prosecuting the work of the company, had advanced moneys for its use, had reported the items to the

home office, and not one of them was disputed. It is not even now alleged that any portion of the debt was invalid, or that there ever was an intention on the part of the officers of the company to call it in question. The debt of the company to Henslee was assignable, and the evidence is uncontradicted that he did assign it to Crow without reservation of any interest to himself. After such assignment Crow had a perfect right to maintain an action in his own name, and Henslee had no more control over the suit than if he had never owned the claim. Being the appointed agent of the company to accept service on all suits brought in Colorado, he could not object to the service of process in this case, and Crow had no right to prosecute his suit without serving the summons on Henslee precisely as he did. It was not the duty of Henslee to interpose a defense, when both he and the company knew there was no defense which could properly be made. To call the judgment fraudulent, under the circumstances above set forth, is simply preposterous. There is no such thing known, either in law or equity, as a fraudulent judgment founded on a just debt. No case can be found where a judgment at law has been set aside in equity unless it was first made to appear that there existed a meritorious defense to the action which the party was prevented from making by accident, fraud or mistake. Courts of equity do not interfere with judgments at law for irregularity or error in the proceedings.

Roller v. Wooldridge, 46 Texas, 485.
Shepard v. Akers, 3 Tenn. Ch., 215.
Finch v. Hollenger, 47 Iowa, 173.
N. Y. H. R. R. v. Hays, 56 N. Y. 175-178.
Taggart v. Wood, 20 Iowa, 236.
Sauer v. City of Kansas, 69 Mo. 46.
Brown's Appeal, 86 Pa. St. 524.
Bissell v. Bozman, 2 Dev. Eq. 154.

And not only must there be accident, fraud or mistake, but it must be unmixed with negligence on the part of the

person seeking relief. He must act promptly and before he has done anything in the nature of "subsequent steps." To recognize the validity of the judgment with full knowledge of all the facts: to ask for and obtain indulgence on promise to pay at some future time: to permit property to be sold under it and then pretend to make arrangements for its redemption—all of which was done in this case—is to forever close the door against equitable relief. This would be so if there was really any question as to the validity of the debt on which the judgment was founded.

Jenkins v. Esterly, 24 Wis. 340.
Shepard v. Akers 3 Tenn. Ch. 215.

Enough has been said as to the validity of the Crow judgment. While it remained of full force, unreversed and unquestioned, an execution was issued, the property of the company was levied upon and sold, it was bought in by Crow and the certificate of purchase transferred by him for value to his co-defendants in this suit. It would be unprecedented to permit a purchaser at the receiver's sale to break the title of innocent third parties who bought on the faith of the judgment.

Rorer on Judicial Sales, Sec. 608.
Gray v. Brignardello, 1 Wall. 627.
Gott v. Powell, 41 Mo. 416.
Vogler v. Montgomery, 54 Id. 577.

II.

The sale of the property of the Brittenstene Silver Mining Company under the Crow judgment was effectual to pass the title of the company, and nothing in the nature of either a legal or equitable reason has been shown for disturbing that title in the hands of the present owners. The objection made to the sale is that all the locations, including the tunnel for working them, were sold together. It is claimed

that the locations should have been sold separately. On this branch of the case the facts are briefly these: The sheriff, when he was about to proceed to make the sale, inquired publicly whether any person would bid on parts or parcels of the property. No one was willing to bid in that way. The sheriff then offered the property as a whole. The highest bid for the entire property was barely enough to pay the Crow judgment and expenses of sale. The several locations cross and overlap each other; there is one tunnel for working the entire property, and no evidence was offered to show that separate parcels could have been sold, that any portion of the property could be made available by itself, that a sale by parcels would have brought a better price, or that any injury resulted from a sale *en masse*. No steps were taken to set the sale aside on account of irregularity either by the company or by White, the present plaintiff, at any time before the expiration of the period allowed by law for redemption. On the contrary, circulars were sent out in behalf of the company, with White's name attached, calling for contributions to redeem the property from the sale; and it was not until White failed to redeem in the time limited by law that he discovered the sale was invalid by reason of a failure to sell in parcels. He not only did not make this objection in time, but he waived any right he might have had to make it. There were a number of other sales of this same property under other executions, all sales made like this one without subdivision, and White redeemed from those sales without so much as a word about the impropriety of selling *en masse*.

From the above statement it is clear that the complainant has no standing in equity. The sheriff acted properly and with commendable discretion in making the sale. "Every one, at all familiar with our mineral regions, knows that the great majority of claims, whether on lodes or on placers, can be worked advantageously only by a combination among the miners, or by a consolidation of their claims through

incorporated companies." (Smelting Co. v. Kemp, 104 U. S. 654.) This property did not admit of subdivision and sale by separate locations, neither is there anything in the statutes of Colorado requiring a sale in parcels even where separate sales are practicable. The prohibition is against the sale of more than is necessary to satisfy the execution and costs. The language of the law is this: "When any property, real or personal, shall be taken in execution, if such property is susceptible of subdivision, it shall be sold (not in parcels but) in such quantities as may be necessary to satisfy such execution and costs." Counsel for appellant say this law is mandatory. It is not mandatory but directory. (Cunningham v. Cassidy, 17 N. Y. 276.) And the direction is as to the amount to be sold and not as to the parcels into which that amount shall be divided. The Colorado statute is taken from the law of Illinois on the same subject, with the omission of the words "shall be sold in separate tracts, lots, or articles." The entire provision in Illinois, in force since 1845, is as follows: "When real or personal property is taken in execution, if the same is susceptible of division, *it shall be sold in separate tracts, lots, or articles*, and only so much shall be sold as is necessary to satisfy the execution and costs." Laws of Ill. ch. 77 sec. 12. And yet it is uniformly held in Illinois, as it is held in other States, that even where the sheriff can and should sell in parcels, a sale *en masse* is not void.

Winchell v. Edwards, 57 Ill. 41;
Brinker v. Rand, 19 Wis. 253;
Benkendorf v. Vincenz, 52 Mo. 441.

Appellant's counsel are mistaken in their assertion (p. 26) that a sale *en masse* under the Indiana law — which requires that each tract or parcel shall be sold separately — is held to be void. The word *void* has been used in some of the Indiana decisions in the sense of *voidable*. See Weaver v. Guyer, 59 Ind. 195, 200, 201, and Bardens v. Huber, 45 *Id.*

238–9. Indeed, when the propriety of ~~the~~ a sale by parcels depends on circumstances and requires the exercise of judgment and discretion, it would be absurd to say that a sale *en masse* is void. Where no one will bid on separate parcels it is held, under statutes requiring sales by parcels, (which we have seen the Colorado statute does not require), that it is proper for the sheriff to sell *en masse*.

Phelps v. Conover, 25 Ill. 309;
Van Valkenberg v. Trustees, 66 *Id.* 103;
Weaver v. Guyer, 59 Ind. 195.

It is also held, on motion to set aside sales *en masse*, that it must be shown that the property would have brought more if sold differently, or the defendant has in some way suffered damage.

Prather v. Hill, 36 Ill. 404;
Wallace v. Berger, 25 Iowa, 456.
Cunningham v. Felker, 26 Id. 117.

And that the right to have an improper sale *en masse* set aside may be lost by laches.

Noyes v. True, 23 Ill. 503.
Prather v. Hill, *supra*.

But this is not all. Application to set aside such a sale must be made in the court which issued the execution and before the time allowed by law for redemption has expired. The Supreme Court of Michigan held that "one who complains of an excessive levy upon his lands, should move for relief in the court which issued the execution, instead of proceeding in equity."

Campau v. Godfrey, 18 Mich. 27.

The principle is the same whether the levy or the sale is irregular.

In Osgood v. Blackmore, 59 Ill. 268, the court said: "But failing to make the subdivision is only an irregularity

which authorizes appellant, if he choose to do so, to have the sale set aside on equitable terms, had application been made to the superior court before the time for redemption by defendant had expired. But this court has never held, nor can it hold, that such a sale is void, and that a party may lie by for years after the sale has been made, the sheriff has conveyed, and others have purchased on the faith of the sale, and thus escape the effect of the sale. On the contrary, it must be held that the defendant waives the objection that the sale was made *en masse* unless he, within the period allowed for him to redeem, moves to have the sale set aside for that reason. And even then, the sale would only be set aside when it appeared that injury resulted to the defendant, by the sheriff failing to divide and sell the property in smaller parcels. In this collateral proceeding the question cannot be raised."

And in Raymond v. Pauli, 21, Wis. 534, Dixon Ch J., who is of counsel for appellant in this case, said: "An execution sale of land in disregard of the law which requires it to be offered in separate parcels, is not void, but only voidable at the instance of the party aggrieved. The remedy is, to apply within a reasonable time, and have the sale set aside on that ground. Undoubtedly a reasonable time must be sometime within the period fixed by law for a redemption. * *"

As it clearly appears that the Brittenstene Silver Mining Company and White deliberately waited until the time for redemption had expired before suggesting irregularity in the sale, there is an end of the matter.

III.

The last question to be discussed is appellant's alleged equitable right to redeem after the expiration of the statutary period. Here both the law and the facts are plain. A party seeking to redeem must comply strictly with the provisions of the statute.

Herman on Ex. Sec. 262.
Freeman on Ex. Sec. 314, and cases cited.

White claims to be the grantee of the Brittenstene Silver Mining company at its receiver's sale. As such, his time for redemption of the property expired Dec. 17th, 1882. He knew long beforehand when the time would expire and had joined in a circular calling for funds with which to redeem. In this circular he gives the time in which the redemption should be accomplished and specifies the Crow judgment, and the sale thereunder, as requiring redemption. He was perfectly well informed on all the facts and the law of the case, and if he had not been he could not have laid the blame for his ignorance at the door of any of the present owners of the property. He proceeded, through Mr. Smith, his attorney, to redeem from the other sales in time, but Mr. Smith, of his own motion and upon his own opinion that the Crow judgment was void, declined to redeem as far as that judgment was concerned. He did not even telegraph White for instructions, but adopted the slower process of the mails, and deliberately allowed the time for redemption to go by. Afterwards he received instructions from White to redeem from all the judgments, and then proceeded, when it was too late, to offer the redemption money. He had received fair warning that he must redeem within the statutory time or not at all. But he says he considered the sale under the Crow judgment as good for nothing. Then he says Henslee did not furnish him proper documents, data, receipts, etc., and finally, he says, the sheriff's certificate of sale erroneously recited that the Geo. M. Robison judgment, on which the same property had been sold, was prior in date to the Crow judgment.

As to the validity of the Crow judgment, that matter has been sufficiently discussed.

As to the failure of Henslee to furnish data, give vouchers, etc., it is only necessary to say that it was none of

Henslee's business to do so. Under the Colorado statute the redemption money could be paid to the sheriff, and whether the property was to be redeemed or not was not left to the holder of the certificate, his agent or attorney. On this point the statute is explicit. It provides that the redemption money may be paid to the purchaser, his executors, administrators or assigns, "*or to the sheriff or other officer who sold the same.*" Laws of Colo., Sec. 1419.

There is no duty imposed on any one to furnish figures, make calculations and give any particular kind of voucher. The payment or tender of the money in time is the one essential thing.

And White's attorney not only ought to have known this but he did know it, for he went to the sheriff and deposited money with him to redeem from the other sales. Henslee had nothing to do with the matter. But it is not pretended that Henslee deceived or misled Smith; he simply did not furnish him with figures showing the amounts of all the judgments, or offer receipts for the money that would serve as vouchers between Smith and White, his client.

It is too plain for discussion that there is not, in all this, a shadow of excuse for Smith's failure to redeem. He knew what he had to do perfectly well. He went to the court records at Buena Vista, the country seat of Chaffee County, and got all the data he wanted, and when he paid the redemption money to the sheriff, as required by law to redeem from other sales, he got a good voucher to use in settlement with his client. He did not redeem simply because he took the responsibility of deciding that the Crow judgment was void.

As to the error in the sheriff's certificate of sale, consisting of a recital that the sale under the Robison execution was on a prior lien, it is a perfectly immaterial and frivolous thing. What possible difference did it make, or could it make, to White whether one or the other lien was the older? Did he not, as grantee of defendant, have to re-

deem from all the sales to make the redemption complete? Is it seriously meant that the judgment debtor, or one claiming as grantee under him, can save his property by redeeming from one, be it the first or the last, of several sales of the same property? Such an idea is simply absurd.

Appellant's counsel cite (p. 14) with apparent seriousness on this question, two cases from Illinois — Sweezy v. Chandler, 11 Ill. 445, and Merry v. Bostwick, 13 Id. 609. It is hardly fair to the court or to opposing counsel, to cite decisions having so little bearing on the matter in hand. Those were cases of judgment creditors redeeming their debtor's property on failure of the debtor or his heirs or grantees to do so. The Illinois statute, differing from the Colorado statute on this point, allowed a judgment creditor to redeem his debtor's property from a sale under an older lien than his own, and, thereupon, the sheriff was required to execute a deed conveying the property to the redeeming creditor. In Colorado a redemption simply annuls the prior sale. "On such sum (the redemption money) being paid as aforesaid (to the purchaser or sheriff), the said sale and the certificate thereupon granted, shall be null and void."

Laws of Colo., p. 527, sec. 11.

But, as before stated, and as appears in the cases cited, a junior judgment creditor in Illinois was entitled to demand a deed from the sheriff on payment of the amount required to redeem from a former sale, and under this law it was held in the cases cited, that a creditor redeeming from the sale under the oldest lien could hold the property as against parties claiming under younger judgments. It is matter for astonishment that these decisions should be cited in pretended support of the position taken in this case that the judgment debtor or his grantee can hold the title to property which has been sold under several valid

judgments simply by redeeming from the sale under the oldest.

We deem it appropriate to close the discussion of this branch of the case by quotations from two of the ablest courts in this country:

"When the statute gives the execution debtor a year in which to redeem after a sale of land has been made on execution, and he neglects to exercise the right, the sale will not afterwards be set aside on his application on the ground that the levy was excessive.

A party who through gross negligence or ignorance of the law fails to redeem lands sold on execution within the time limited by statute, has no claim to relief in equity."

Campau v. Godfrey, 18, Mich. 27, 44.

In a later case the Illinois Supreme Court said: "Where two distinct lots are sold *en masse* on execution, the judgment creditor or his grantor succeeding to his rights, will have the right to have the sale set aside before the right of redemption expires, by motion, unless specal circumstances are shown rendering a sale *en masse* proper.

"Where a judgment debtor or his grantee, has ample remedy, by motion, to set aside a sale of land on execution and fails to avail of it, he will be required, on a bill in chancery after the time of redemption has expired, to show a case loudly calling to equity for relief, before the sale will be set aside. He must show a strong case of fraud, wrong or oppression, accompanied by an offer to pay the purchase money and interest."

Hay v. Baugh, 77 Ill. 501.

Appellant's counsel make a labored effort to show that the second sale under the Evans judgment was a nullity. We care not whether it was good or bad. The title to the property is claimed by appellees under the Crow judgment, and all discussion of the effect of the second sale by Evans is out of place.